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POLITICAL SCIENCE QUARTERLY.

JAMES E. THOROLD ROGERS.

I. *Mr. Rogers' Early Opinions.*

THE electors to the Oxford professorship of political economy have recently had an opportunity such as comes but rarely. Twenty-one years ago, a rule intended for another purpose was taken advantage of by party feeling to deprive a man of his professorship who was indisputably competent for the position, and who by his achievements had already done honor to the university. Last year the office again became vacant; and it was with the feeling that a tardy act of reparation had been performed that the younger generation of Oxford men learned that Mr. Thorold Rogers had been re-elected.

Ever since the appearance of the first two volumes of his *History of Agriculture and Prices in England* in 1866, Mr. Rogers has occupied a unique place among English economists. He has been regarded as the economist above all others who could claim to base his views as to the problems of to-day upon knowledge of the history of the past; and it has been generally recognized that, however open to criticism might be his conclusions, the facts he has gathered do indeed form a great body of valuable information. This appreciation has not unfrequently, perhaps, erred in the direction of over-estimate; and Mr. Rogers has sometimes been looked upon as standing absolutely alone in his acquaintance with early English economic history — a misconception which his own language did nothing to weaken. Much useful work had been done before Mr. Rogers by the race of social antiquarians, and masses of evidence had been and still were being printed by the government and various societies.

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There was, however, some slight justification for the misconception: the materials just mentioned had been thought of as useful only to the "historian" and antiquary; and of the scholars who had collected them none had approached the subject of the social development of England with the object of studying its relation to modern economics.

It was chance, and not any theory as to the proper method of economic inquiry, which first turned Mr. Rogers' attention in this direction.

> I was led . . . to enter upon this branch of history in consequence of some suggestions made at the meeting of the International Statistical congress in 1860, as to the importance of researches into ancient values, and the relations which might be determined between the prices of labor and food. . . . As I was obliged to remain during the long vacation at home, I searched in the Bodleian, and found a little evidence for the fourteenth century and much for the sixteenth. At first it was my intention to confine my researches to the change of values . . . in the sixteenth century, and thinking that information might be obtained from the account books of the colleges, I investigated . . . those of All Souls. Subsequently I obtained permission to examine the muniment room at Merton, and here I found a vast store of the most valuable documents. I resolved therefore to begin as early as I could, and to make use of the archives in the Public Record office. I have thus become an antiquary by accident.[1]

In truth, however, Mr. Rogers is an antiquary by nature; he loves to dwell on the details of bygone social conditions; and he has this great advantage over mere book scholars — a wide knowledge of practical agriculture and an ardent interest in its improvement.

As an economist Mr. Rogers was then, as we shall see later, almost wholly "orthodox"; as was natural for a man who had taken his degree in the year of the repeal of the corn laws, who had enjoyed the intimate friendship of Cobden and had begun the study of the subject at a time when the influence of Mill was supreme. Accordingly, he took the view of history then usual, and even yet not rare with economists, — the view which regards her as the modest handmaid of economic theory, as

[1] History of Agriculture *etc.* II, pref. p. xi.

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furnishing illustration and confirmation of "laws" arrived at without her aid.

> The bearing of such facts as will be found recorded in these volumes is not without its meaning on those *maxims of political economy*, . . . the practice of which is destined . . . to become the chief function of wise government.[1]

He had no fear that the facts might not confirm the "maxims." Indeed, he held that the middle ages were precisely the period in which the working of economic "laws" could be most clearly traced. Bagehot, we may remember, has defined "English political economy" as "the science of business, such as business is in large productive and trading communities."[2] Mr. Rogers' position was the exact opposite of this:

> In the middle ages . . . governments had not developed to any marked extent that perpetual interference with the freedom of trade which has characterized their later activity. I do not mean that there was no desire to adopt restrictions. . . . But the machinery was not provided by which such limitations could be operative[?]. Some of the problems of political economy can be . . . determined with greater ease from the facts which I am able to bring before my reader than they could be out of the wider information of our own time. Thus, for instance, the laws which govern prices will . . . be seen more clearly in these mediæval records, than they could be in a modern price current.

Mr. Rogers' mental attitude at this time is sufficiently illustrated by his treatment of the history of wages.[3] He sets out by stating as a matter "of course" that "remuneration is determined by the relation between . . . the number of persons competing for employment and *the amount of wages which can be divided among such competitors*"—the old "wage-fund theory."[4] Then he says: "We should be led to anticipate" (clearly by *a priori* reasoning) certain conclusions, *inter alia* "that the price

[1] *Ibid.* I, pref. p. ix.
[2] Economic Studies, p. 5.
[3] History of Agriculture, I, p. 261.
[4] Since writing this, I have noticed that Mr. Rogers has recently declared, in his Six Centuries of Work and Wages, p. 565: "I never agreed with Mr. Mill's wage-fund theory." I am, however, unable to distinguish Mr. Rogers' position as stated here, and more at length in his Manual, from what is commonly known as the wage-fund theory, and accordingly I leave untouched my references to the subject.

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of labor and the price of food are in some measure and on a large scale relative; that where food is high, labor is also high," —a Ricardian doctrine which Mr. Rogers has since repudiated. Having thus told us what he is going to look for, he proceeds with his historical facts "to illustrate these hypotheses, and show how they are verified." And we may notice that as, in Mr. Rogers' view, history "illustrated" the teaching of the Radical economists, so it also confirmed their gospel of *laissez faire*. The conclusion of the whole matter was this:

> It is to no real purpose to learn the lesson by which wealth is produced, unless we are also ready to *leave to their natural freedom* those agencies by which wealth is distributed.[1]

Two years later appeared the *Manual of Political Economy*. In this book was for the first time shown that tendency to separate himself from other economists, that desire to emphasize his divergence from them, which has become so marked a characteristic of Mr. Rogers' later writings. Wherein this difference of opinion consisted we shall shortly examine. The main point, however, to be noticed about the book is really, in spite of all disavowals, its intense orthodoxy. To prove this, we need scarcely do more than point to such a phrase as this: "These practices [*sc.* combinations of workmen to raise wages] are *an interference with economical laws*."[2] The readers of Mr. Sidgwick's *Principles* will remember that he quotes from an Edinburgh Reviewer of 1867 a passage implying the same untenable conception of an economic "law" as something which can be "interfered with," but speaks of it as "an extreme case," and one which "it would be unfair to represent as typical."[3] But here we find exactly the same idea, in a book which reached a third edition within a very short time because it was so largely used in schools. Mr. Sidgwick, like some other recent apologists for the political economy of the last generation, is, one cannot help thinking, a little inclined to idealize it.

[1] History of Agriculture, I, pref. p. viii. The anacoluthon in the first part of the sentence is very characteristic of Mr. Rogers' style.

[2] Manual, p. 56.

[3] Sidgwick, Principles of Political Economy, p. 13 and note.

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To return to the *Manual* of 1868. Its strenuous individualism is apparent in every chapter. We find, for instance, quite a superfluity of arguments to prove that trades unions cannot possibly affect wages, among which the wage-fund doctrine figures with even more than its usual sweet reasonableness:

> It has been said, epigrammatically, that trades unions are a machinery by which ten per cent of the working classes combine in order to *rob* the remaining ninety per cent. . . . No act on the part of laborers can increase the amount of capital . . . in the country. . . . If, therefore, a trades union succeeds in *extorting* a larger share of this *fund* . . . it can only do so by leaving less to those who are unable or unwilling to enter into a union.[1]

Like his master, Cobden,[2] Mr. Rogers believed that the only way in which workmen could improve their lot was for each of them to save enough money to be able to transfer his labor to better markets. For other examples of the same spirit the reader of the *Manual* may look at the chapter on protection, where Mr. Rogers lays down the principle that "society exists in order that the largest possible freedom may be given to the individual will";[3] and at the chapter on taxation, which he treats as simply a payment on the part of individuals for services which, in consequence of division of labor, the government can more conveniently perform for them.[4]

Even more interesting is it to notice that Mr. Rogers was at this period greatly impressed by the teaching of Bastiat; a fact which, while it still further emphasizes his economic optimism, throws some light on his disagreement with certain current doctrines. Bastiat's vigorous advocacy of free trade in France, his enthusiastic admiration for the anti-corn-law league, and his friendship with Cobden, gave him for many years an authority with English Radicals curious now to look back upon. He was, indeed, an economist after Cobden's own heart — a man who taught the blessings of unrestricted competition not merely as

[1] Manual, pp. 95, 96.

[2] Morley, Life of Cobden, I, p. 466: "I would advise the working classes to make themselves free of the labor market of the world, and this they can do by accumulating twenty pounds each."

[3] Manual, p. 223.

[4] *Ibid.* pp. 273 *et seq.*

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scientific truth, but also as a gospel of good will towards men. It was not wonderful, therefore, that a disciple of Cobden should speak of Bastiat as "the great French economist," or that he should introduce his book with a couple of mottoes from that marvel of rhetorical shallowness, the *Harmonies économiques*. But Mr. Rogers' homage to Bastiat was more than verbal: Bastiat's influence colored all his thought. It was, for instance, from Bastiat that he had learnt the use of the ambiguous term "service," which, like his French teacher, he employed to prove that, since free exchange is in a sense advantageous to both parties, it should never be interfered with.[1] Bastiat, again, laid great stress on what he deemed a correction of the Malthusian doctrine of population; and accordingly population is one of the two subjects — rent being the other — which in Mr. Rogers' opinion most clearly illustrate the deficiencies of English economists. But here we may perhaps discern another and very different influence, that of history, converging toward the same conclusion. Bastiat had substituted for the formula of Malthus: "Population tends to increase beyond the means of subsistence," the formula: "Population tends to increase up to the level of the means of subsistence." Even then there was something distressing in the thought; but it was all removed, said Bastiat, by the great truth of the perfectibility of man: human intelligence could and did counteract this tendency and make subsistence increase faster than population.[2] Similarly, Mr. Rogers lays down that population cannot increase faster than food, since food is the condition precedent for human life. But he had something that Bastiat had not — a knowledge of the history of English agriculture, which led him to believe that the increase in the quantity of food produced in that country had, as a matter of fact, outstripped the increase in population. This conviction, doubtless, came to the aid of the impressions derived from Bastiat, and produced the dictum: "Population increases with the increase of quarters of wheat."[3] One might perhaps remark that Bastiat and his English follower

[1] Manual, pp. 4–6. *Cf.* Bastiat, Harmonies (Œuvres, VI) pp. 109 *et seq.*
[2] Bastiat, *ibid.* pp. 170, 171.
[3] Manual, p. 73.

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alike miss the real point of Malthus's argument; and that the only question worth asking is not as to the abstract truth of his proposition, but as to its importance in any particular case. Far more valuable than his direct criticism is Mr. Rogers' account of the circumstances which suggested the Malthusian doctrine to its author. Here Mr. Rogers' procedure illustrates one of the most marked characteristics of modern speculation. The question of the *origin* of a doctrine is not, indeed, exactly the same as that of its *validity*, but there is an increasing tendency, a tendency in the main justifiable, to seek the answer to the second question through the answer to the first.

The consideration of Mr. Rogers' indebtedness to Bastiat has insensibly led us from his orthodoxy to his heterodoxy, and this will therefore be a convenient place to say something concerning Mr. Rogers' views on rent, to which he himself attributes vastly more importance than to any other part of his teaching. On this point his opinion has never changed, and the objections to the Ricardian doctrine, put forward in the *Manual*, have been repeated with ever increasing vehemence in his subsequent writings.[1] In the judgment of the present writer, Mr. Rogers has here rendered real service to modern economics. Unfortunately the habit of sweeping assertion and wholesale denunciation in which he indulges have not a little weakened the force of his arguments. We may perhaps state his position thus: He has no quarrel with the statement which is pretty generally supposed to be the Ricardian theory of rent; namely, that under completely competitive circumstances rent is the excess of the return to the agriculturist over the cost of production, together with, or including therein, the ordinary rate of profit on the capital invested; an excess which may, if we choose, be measured upward from an imaginary "margin of cultivation."[2] Indeed in his *Manual* he defined rent in precisely the same way himself.[3] His objection to it is

[1] See, *e.g.*, Economic Interpretation of History, pp. 160 *et seq.*

[2] This is actually called "Ricardo's theory of rent," by Fawcett, Political Economy (6th ed.) p. 114. *Cf.* Mill, Principles, book ii, ch. xvi, § 4; Marshall, Economics of Industry, p. 83.

[3] Manual, p. 159: "The proper definition of rent is: All that remains in the price at which the produce of land is sold when the cost of production is deducted."

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rather that it is a truism, which does not really carry us any farther.

> People will pay for an agricultural advantage which secures profits above the average. . . . So far Ricardo is right, but thus much was known in the days of the Egyptian and Babylonian Kings.[1]

But this was not really what Ricardo cared for; had it been, there need not have been the long controversy between himself and Malthus, who had defended it as a sufficient explanation of rent.[2] What Ricardo cared for was his account of the cause which led to lands of different degrees of fertility being in cultivation at the same time. This cause, he held, was the increase of population. His doctrine of rent was only one part of a theory as to the normal development of society, in which increased population, higher rents, dearer food and lower profits followed one another in necessary sequence. It is this position that Mr. Rogers attacks. The one cause, according to him, of "the occupation of inferior soils" in England "and the increased fertility of land long cultivated is the growth of agricultural art."[3] It cannot, I think, be said that Mr. Rogers has substantiated this broad assertion.[4] Indeed it may be suspected that his substitution of one sole and sufficient cause for another is itself due to a fondness for simple solutions inherited from the unhistorical economists. But he shows that there is good reason to believe that in certain periods at any rate, such as the first half of the eighteenth century in England, rents were greatly increased owing to the improvement of agriculture, in spite of a population increasing but slowly and in spite of low

[1] Economic Interpretation of History, p. 166. Mr. Rogers sometimes speaks as a very Ricardian of the Ricardians, as in the passage where he talks of "the *inexorable* law which limits profits to an average on the calling." But in other places he points out that it is a mistake "to treat the movements of capital as all equally fluid," and shows that the loss involved in withdrawing capital from a farm may cause a man to accept less than the average rate of profits; *ibid.* p. 173.

[2] Malthus, Political Economy, ch. iii, §§ 1, 3.

[3] Manual, p. 157. *Cf.* Cobden and Public Opinion, pp. 54, 55.

[4] He himself allows that other causes have at various times produced the same result: *e.g.*, in the seventeenth century, the unjust diminution of laborer's wages; and between 1782 and 1820, the high prices due to scarcity. Work and Wages, pp. 482, 486.

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prices.[1] If Mr. Rogers' criticisms of Ricardo have led only to this result, — to the breaking down of a neat and simple abstract theory and its replacement by a due regard to a multiplicity of causes, each of which has influenced rent, — he will have done something to bring economics back to real life.

Soon after the publication of the *Manual*, Mr. Rogers lost his professorship. To be so rewarded for such work as the first two volumes of his history was enough to have shaken any man's scientific ardor, and from this time onward his energy was largely devoted to current politics. In 1873 appeared his *Cobden and Public Opinion;* in 1874 he stood as a candidate for Parliament at Scarborough, and in 1880 he was at last elected for Southwark. This perhaps explains in part the non-appearance of the next two volumes of the *History of Agriculture* until sixteen years after the first instalment. But the long delay was also in part due to the protracted and tedious labor which the work involved. "The archives of the fifteenth and sixteenth centuries are scantily fruitful" when compared with those of the fourteenth, and accordingly it was necessary to examine a far larger number of documents to collect an equal body of facts.

This is not the place to eulogize the *History of Agriculture and Prices*. When some of us, of a later generation, are inclined to be irritated at Mr. Rogers' one-sidedness and exaggerations, we need only to turn over the pages of these six volumes to be restored to a humbler frame of mind. Our author is, perhaps, unnecessarily bitter when he says that his work has remained unappreciated, "the fate of all original research in this country." His name, on the contrary, was a tower of strength to those rebellious economists who, during the decade 1870–1880, began to criticise accepted doctrines; they sheltered themselves behind his reputation for heterodoxy and learning, without very carefully examining wherein Mr. Rogers really was heterodox. But certainly his labors had not received the recognition they deserved; and we cannot too much respect the patience which could plod on in the face of discouragement. If any criticism might be ventured, it would be to ask whether it was alto-

[1] Economic Interpretation, pp. 268–271.

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gether necessary to print *every* price that could be found. Even if we grant that this might be desirable in the case of labor and corn and cattle, it seems scarcely worth while to pursue the same plan with laths, tilepins and nails. We might go further and say that it is difficult to see what purpose can be served by the greater part of the figures in the second, third, and sixth volumes, that is not served equally well by the decennial averages and the notes on particular years which are to be found in volumes one, four and five. They are not such an exact reprint of authorities as will enable the reader to check Mr. Rogers in his statements; they enable us to do nothing but verify his averages. But if we are to trust his interpretation of documents, we may as well trust his arithmetic.

In 1884 Mr. Rogers issued a popular account of his conclusions, together with a number of general remarks and miscellaneous facts, under the title: *Six Centuries of Work and Wages.* In 1887 appeared the fifth and sixth volumes of the *History*, more rapidly prepared than their predecessors because of the greater abundance of evidence; and also the interesting *First Nine Years of the Bank of England*, based upon a record of the price of bank stock which Mr. Rogers had been fortunate enough to discover. To crown his labors, Mr. Rogers delivered, in that and the following year, as lectures at Oxford the chapters which now form his latest work: *The Economic Interpretation of History.* It may be regarded as, in some sort, the author's manifesto on resuming his professorship, and therefore to it the criticisms which follow will be chiefly directed.

II. "*The Economic Interpretation of History.*"

In the first place, what is meant by "the economic interpretation of history"? Does Professor Rogers agree with that growing school of historical economists who believe that the economic development of society is the dominant fact of history; that great "political" events can be explained only by reference to the social life which lies in the background; nay, that they are usually no more than consequences or symbols of

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changes in social structure or in the balance of economic forces?[1] Does he agree with them in looking upon the history of society as revealing a reasonable development, as a succession of stages each with its purpose and meaning, and each related to those which went before and came after it? Something like this we might perhaps expect from the title of the book and from the position as a historical economist which Mr. Rogers is often supposed to hold. But we shall find nothing of the kind. Mr. Rogers does not even examine the main facts of political history from the standpoint of the economist. What he does give us is a number of vigorous essays, full of valuable facts and of observations some shrewd, some hasty, on a number of topics. The chapters upon the history of agricultural rents and upon labor legislation are tolerably complete; the rest are extremely "scrappy," passing lightly backwards and forwards over half a dozen centuries, with no little little irrelevant matter.

The first thing that strikes one on comparing the *Economic Interpretation* with the *Manual* is the violence of the reaction which it displays.

> By this study [*sc.* of social history] I began to discover that much which popular economists believe to be natural is highly artificial, that what they call laws are too often hasty, inconsiderate and inaccurate inductions, and much which they consider to be demonstrably irrefutable is demonstrably false.[2]

He seems to think that no part of the structure remains standing. "In attempting to frame a system," he says, the economists "have wrecked all system." For all its important parts he has one final word of condemnation, "logomachy."[3] With greater justice he remarks that political economy has "strangled itself with definitions." On this last matter he has an admirable sentence:

> Word-splitting and *definition-extending* is a most agreeable occupation. It does not require knowledge. *It is sufficient to be acute.*

Examples of such "acuteness" are only too abundant.

[1] *Cf.* Lord Acton, German Schools of History, *English Historical Review*, vol. i.
[2] Economic Interpretation, pref. p. vi. [3] *Ibid.* pp. vii, ix.

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Under these circumstances Mr. Rogers determines to "make it his business" not to construct a theory into which selected facts shall be made to fit, but "to examine into and explain the *history* of social facts," *i.e.* first to get the facts and then to explain them. "Political economy," he says, "rightly taken, is the interpretation of all social conditions."[1] So far many of us would agree with him. Unfortunately, Mr. Rogers not only believes that a particular method of study should be adopted; he thinks he has already found by its aid the explanation of all the modern difficulties of England. It is that "the greater part of the misery" that exists "is the direct product of laws enacted and maintained in the interests of particular classes"; that it is due to persistent wrong-doing on the part of men who ought to have known they were guilty of injustice.[2] The more weighty counts of this indictment will be examined later; meanwhile it may be remarked that such a conclusion seems very like a remnant or product of Mr. Rogers' old radicalism. Much as he may have modified his earlier opinions, it is still natural and pleasant to him to find in kings and courtiers and landowners the sources of all our woes, even if the kings and landowners be but dead ones.

It is surprising, then, to discover, after Mr. Rogers' exordium, that in matters of theory this last book exhibits a change of view on one subject only, that of wages, though that, indeed, is a subject of the first importance, and the change is nothing less than complete conversion. Rushing to the other extreme, he is now eager to proclaim his unique liberality among economists. He repudiates the wage-fund theory as a "half-truth," even a "fallacy"; and he justifies trades unions or, as he prefers to call them, "labor partnerships," as legitimate developments of the joint-stock principle. They are useful, he thinks, because they sometimes raise wages; because they still more frequently prevent them from falling; and, above all, as serving as a basis for the arrangement of sliding scales and the like.[3] His defence o

[1] Economic Interpretation, pref. p. xii.

[2] *Ibid.* p. ix. *Cf.* p. 352: "The beggary of the working classes was the direct and *deliberate* work of the legislature."

[3] *Ibid.* pp. 308–317.

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unionism will, we may trust, be of use in some quarters. It might seem ungenerous, therefore, to diminish Mr. Rogers' credit on this account, were it not that in the course of his remarks on this subject, as not infrequently elsewhere, he has been conspicuously unjust to John Stuart Mill. No one would gather, from Mr. Rogers' references to Mill, that Mill himself abandoned the wage-fund theory twenty years ago, and that he used in doing so very much the same arguments which Mr. Rogers now adduces with a certain air of originality.

After giving due weight to Mr. Rogers' utterances on wages, it is still remarkable to find how large a survival of the old Adam of 1868 may be found in his latest writings. Take, for instance, the four or five curious pages early in the book,[1] where (after remarking, *en passant*, as it were: "It may assist us . . . if I state briefly what are the relations of labor and capital") he goes on to distinguish "active or productive wealth," *i.e.* capital, from "passive or unproductive wealth," precisely as at the opening of most orthodox treatises; defines "the function of capital" as that of "securing the continuous employment of labor, and, as far as possible, *equalizing prices and profits*," — a sentence of very Ricardian sound; and then gives the customary analysis of profit into interest, insurance, and wages of superintendence. Here, for once, Mr. Rogers confesses his acquiescence in "the views of most economists"; he is even unlucky enough to say that "*all* economists agree" with that particular analysis of profit — a phrase which shows how little attention Mr. Rogers has paid to recent discussions. He then goes on to declare that wages may be resolved into the same constituents: interest on the cost of the laborer's training, "sufficient for the industrial education of his successors"; insurance for risk, wear and tear, and old age; and remuneration for work done. This is obviously to leave the ground of *what is* for the ground of *what should be*; for Mr. Rogers proceeds to point out that the laborer is by no means sure of obtaining such a wage from the employer. But the point to be noticed is this, that Mr. Rogers does not profess that "these elementary economical principles" are conclu-

[1] *Ibid.* pp. 17–21.

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sions drawn from history: they are postulated as truths commending themselves to reason which history can do no more than illustrate.

When we turn to his utterances on economic policy, his orthodoxy is even more marked. He rages against protectionism with all the refreshing vehemence of the anti-corn-law days. "All protection," he says, "means robbing somebody else";[1] of Mill's exception in the case of young industries, he declares that "perhaps no passage in any work exhibits so much ignorance of human nature, and so much ignorance of facts";[2] and he prepares the minds of his readers for an unbiassed examination of the "fair-trade" movement, by personal abuse of its leaders.[3] It is indeed hardly to be expected that the pupil of Cobden should see in protection anything but the abomination of desolations. But he displays just the same sturdy individualism in his treatment of other political questions; and though he makes fun of Lord Wemyss and the Liberty and Property Defence league,[4] it may be doubted whether it is not party antagonism which makes the chasm between them appear so great. The book opens with a confession of faith in *laissez faire:*

> I would be the last person to deny that there are economical generalities which are as *universal* in their application as they are true. [The first of them being that] . . . the individual has an inalienable right to lay out his money or the produce of his labor to the best advantage, and that any interference with that right is an abuse of power. In other words, there is no answer to the claim of free exchange.[5]

Later on, it is true, he will be found to argue that *laissez faire*, though it was justifiable in the time of the physiocrats and Adam Smith, is "not a panacea for all social mischiefs";[6] but this, he believes, is merely the result of mistaken action on the part of government in the past.[7] It is noticeable that all the instances in which he excuses the violation of the principle are, with one exception, instances where the English Parliament has

[1] Economic Interpretation, p. 375. [2] *Ibid.* p. 386.
[3] *Ibid.* pp. 365, 366. [4] *Ibid.* p. 351. [5] *Ibid.* pref. p. v. [6] *Ibid.* p. 350.
[7] In Work and Wages, p. 549, it is expressly said that "beyond the removal of positive mischief which it has in times past created, the legislature can do little more than give every freedom it can for innocent energy."

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already violated it. The one exception is Mr. Rogers' proposal to introduce into England the principle of tenant-right. In all other cases Mr. Rogers sets his face against what he calls "the meddlesomeness of the government."[1] He would not have the state purchase the railways; among other reasons because then railway servants would use their political power to secure "shorter hours and longer pay,"[2] which is just the reason why state ownership commends itself to many people. He would have the English government give up its army-clothing and small-arms' factories, and even, perhaps, the dock-yards, chiefly because competitive contracts would produce the goods more cheaply, and "in manufactures economy is, all but invariably, coupled with improvement."[3] We need only to be reminded of the scandalously low remuneration which used to be paid in England for sewing uniforms, owing to the contract system and "sweating" combined, to see that economy, so far as the budget is concerned, may not always be for the best interests of the community.

Even where our author's sympathies are with some proposed change, *e.g.*, the limitation of labor to eight hours a day, he still holds the opinion which Cobden expressed more than fifty years ago, that such reforms should be brought about by the combination of workmen rather than by the action of the state. "I have a great aversion to legislation on behalf of adult labor."[4] "I am convinced that it is well to circumscribe the functions of government."[5] "Government" he uniformly identifies with the central executive; as where he objects to state action on the ground that "centralization has been carried too far."[6] But the competition of individuals may be limited by the action of local organs of the state, such as municipalities, just as much as by that of the national executive; and this seems to be the direction in which the next invasion of the territory of *laissez faire* is likely to take place.

Similarly with regard to other proposals, Mr. Rogers invariably takes up what may be called a "conservative" attitude;

[1] Economic Interpretation, p. 502. [2] *Ibid.* p. 512. [3] *Ibid.* p. 521.
[4] *Ibid.* p. 352. [5] *Ibid.* p. 522. [6] *Ibid.* p. 512.

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using "conservative" as implying the defence in the main of the present arrangements of society. He believes, for instance, in "the general wisdom of the English financial system." The only parts of it he strongly objects to are those parts which weigh most heavily on the professional middle class, especially the income-tax, which he denounces as "intrinsically unfair."[1] He commits himself to the proposition that "direct taxation is always more unequal than indirect."[2] He objects to the proposal to impose a heavy tax on intestate succession[3] (grievously misrepresenting Mill while purporting to expound him); and he disapproves alike of the compulsory enfranchisement of leaseholds and of the special taxation of ground rents.[4]

I do not suggest that Mr. Rogers is wrong in all these opinions: in some he seems to have the balance of argument on his side. My object is rather to show how far Mr. Rogers is from the position either of evolutionary or of revolutionary socialism. Yet, in spite of this, his name is frequently invoked by English socialists of the revolutionary school. The reason is to be found in his historical conclusions, and the bitter language wherein he expresses them.

III. *The Course of English Social History.*

We come, then, at last to the question, what, according to Mr. Rogers, has been the course of English social history. I must repeat at the outset that Mr. Rogers' volumes contain a wealth of detail upon all sides of the life of the past. They are therefore absolutely indispensable to the student of economic history. But that their value lies rather in their character as *materials* than in their conclusions, will perhaps be apparent from an examination of some of the results at which Mr. Rogers has arrived.

The year 1259 is selected for the beginning of the *History of Agriculture* and the works based upon it, on the ground that only from this year onward can we obtain the information nec-

[1] Economic Interpretation, pp. 476–478. [2] *Ibid.* p. 123.
[3] *Ibid.* pp. 471–474. [4] *Ibid.* pp. 497, 498.

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essary for our purpose, since "the social history of England is almost a blank for two centuries after Domesday."[1] So far is this from being the case that there is, for those two centuries, a whole series of easily accessible printed documents, compared with which the bailiffs' rolls of which Mr. Rogers speaks contribute but little to our knowledge. What we do get from the latter is more abundant evidence about *prices*. Here, as throughout, we trace the unfortunate consequences of Mr. Rogers' limitation of view, during the early years of his work, to one subject and one group of authorities.

After describing the condition of things in the latter part of the thirteenth century and the early part of the fourteenth, in the manors whose accounts he has examined, Mr. Rogers hastens to the "black death" of 1349 and the peasant revolt of 1381, the two fixed points from which, in his version of English history, everything dates. England was then almost exclusively an agricultural country; and the rural population, occupying the estates of the manorial lords among whom the land was divided, fell roughly into three classes: the comparatively small body of free tenants; the far larger classes of villeins or customary tenants, occupying the greater part of the soil; and those laborers who, even if they held a few acres, were more or less dependent upon wages. The position of the villeins is the crucial point in the discussion. It is clear that their condition had been greatly improved during the three centuries which followed the Norman conquest. They had been bound to labor, or find a man to labor, on the lord's demesne, *i.e.* the part of the manor which he kept in his own hands and cultivated through a bailiff, for two or three days every week all the year round: this obligation had by this time been universally commuted for a fixed money payment at certain intervals. With the money thus received, the manorial lords were able to hire laborers as they were wanted, and only at ploughing and harvest time were the villeins still generally bound to give their assistance for a few days; and even this duty had in many places been commuted for terminal payments. In addition, the

[1] Work and Wages, p. 18.

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lords also received from the customary tenants certain lesser services and dues, which need not be dwelt upon. Now Mr. Rogers shows, and I believe was the first to show, that the black death led to the laborer demanding wages fifty per cent higher than had before been customary, and that, in spite of the numerous "statutes of laborers," they succeeded in getting them. The result, in Mr. Rogers' opinion, was that the lords of manors, finding that the "rents" of the villein-tenants no longer enabled them to purchase the same quantity of labor, tried to restore the state of things which existed before services had been generally commuted. They attempted, that is to say, to force the customary tenants, now becoming comfortable copyholders, into the humiliating position of their ancestors a century and a half before. The result was a just rebellion.

In the first volume of the *History of Agriculture* this explanation was put forward as a bold surmise:

> I am compelled to state what I feel convinced was the fact in the form of a hypothesis. But I cannot account for the outbreak on any other ground than that of an attempt on the part of the customary tenants to vindicate their right to pecuniary commutation against a threatened invasion of the custom. . . . What if an attempt had been generally made to set aside the pecuniary commutation, now so old, familiar, and all but universal, and substitute for it such labor rents as had been anciently rendered?[1]

Eighteen years afterwards, in *Work and Wages*, the hypothesis had become an absolute fact. The manorial lords, we are told,

> certainly strove to reverse the bargain which they had made with their serfs and had engrossed on their rolls, determining to reduce them to villenage again, or at least to exact the old labor dues.[2]

Giving the reins to fancy, Mr. Rogers indulges in three pages of imaginary argument *pro* and *con*, in which the language of modern Conservatives about "our place in the councils of Europe," and of modern Liberals about contracts needing to be equitable, is duly put into the mouths of the enemies and friends

[1] History of Agriculture, I, pp. 81–83. [2] Work and Wages, p. 253.

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of the serfs respectively.[1] By the time Mr. Rogers came to write the *Economic Interpretation*, he was getting perhaps a little weary of the story, but he cannot refrain from boasting how that

> the ordinary history books . . . of modern date have accepted in silence the *proof* which I published more than twenty years ago as to the causes and consequences of the insurrection. The late Mr. Tom Taylor told me that when he discovered *the real facts of the case as I had narrated them* . . . he meditated writing an historical drama on the subject.[2]

A greater man of letters than Mr. Taylor — Mr. William Morris — has actually based upon Mr. Rogers' assertion his prose poem called *A Dream of John Ball*,[3] and very properly calls upon us to be indignant with "the lords that would turn their tenants all into villeins again as their grandfathers had been," swearing that "ere a year be over, ox and horse shall go free in Essex, and men and women shall draw the team and plough."

It needs some little boldness to declare that all this theory is "a fond thing, vainly invented and grounded upon no warranty." Yet certainly no evidence has yet been adduced that can be regarded as confirming it, and the events of 1381 can be sufficiently explained without it. We may grant that, now that labor had become so costly, the lords would insist on the exact performance of such labor dues as had not yet been commuted, and on the punctual payment of all money dues. There is much reason to believe, moreover, that they abused their power of imposing "amercements" on their tenants in the manor courts for trivial breaches of duty.[4] Certain burdens, also, weighed upon the villeins which were regarded as peculiarly humiliating and characteristic of servitude, of which the most important was the obligation of paying a fine when a daughter was given in marriage. With the teaching of Wyclif in the air, it was natural enough that the villeins should become restive. Men were

[1] Work and Wages, pp. 266–269. [2] Economic Interpretation, pp. 29, 30.

[3] 1888. See especially pp. 13, 39.

[4] "When ye amercyn any man, let mercy be taxour"; Piers Plowman, C. Passus ix. l. 37 (Skeat i, p. 197). "Lords many times do wrongs to poor men by unreasonable mercyments"; Of Lords and Servants, in English Works of Wyclif, p. 233 (Early English Text Society).

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found to tell them that as, according to the teaching of Wyclif, it was lawful to withdraw tithes from priests who lived in sin, so "servants and tenants may withdraw their services and rents from their lords that live openly a cursed life."[1] Villeins in various parts began to "withdraw their services and customs," referring to "pretended exemplifications of Domesday" as their justification.[2] Human nature being what it is, the lords resisted the movement, and then the rising took place. The revolted villeins without question demanded freedom, liberation from "servitude and service"; that is to say, they asked that they might hold their land on a free tenure. What that meant varied from place to place, as is clear on comparing with one another the charters of manumission actually granted in their terror by the monks of St. Albans to their various manors,[3] where the boldest demand on the part of the tenants was that they might have their lands "free, in such a way that they might sell them." In the minds of the rebels, some very definite minor grievances were probably associated with vague and lofty notions of liberty; but when they came to draw up a programme, the most definite article in it was that they should not have to pay a higher rent than fourpence for each acre of land. In spite of what Mr. Rogers says as to the real success of the movement, the burdens against which they revolted only very gradually disappeared; and their final modification into the innocuous curiosities of copyhold was the result of the transition from arable to pasture during the next two centuries.

In one of his recent essays, Dr. Jessopp has compared the theories of certain historians with those of the earlier geologists, who "explained all the great changes in the crust of the earth by magnificent cataclysms."[4] Mr. Rogers belongs to the cataclysmic school. Our hearts are cheered by the noble stand which the peasants made for their liberty; we are bidden to look upon a century and a half of prosperity for both tenant and laborer; until suddenly another catastrophe took place.

[1] Of Lords and Servants, in English Works of Wyclif, p. 229, where Wyclif defends the poor priests from the charge of having spread such notions.

[2] Preamble to the Statute 1 Richard II, c. 6.

[3] Gesta Abbatum S. Albani (Rolls Series), iii, 324–326.

[4] The Coming of the Friars, p. 257.

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At the very best age of the workman *a ruin was impending*, the causes of which I have been able to collect.[1]

This disaster was the issue of a debased currency in the later years of Henry VIII and during the reign of Edward VI.

While the rise during the years 1540–1582 in the price of provisions was 2.71, the prices of the previous 140 years being taken as unity, the rise in the price of labor was only 1.64.[2]

The rise in wages was thus very far from making up for the increased cost of food; the result was that the English laborer was within a very few years placed in a much worse position than before: an evil which Elizabeth's reformation of the currency did nothing, Mr. Rogers thinks, to alleviate.

From the epoch of Henry's death the degradation of the English laborer begins. For nearly three centuries the artisan suffered with the peasant; that is, as long as the combination laws impeded the creation of . . . trades unions. But the condition of the farm laborer has gone from bad to worse. . . . We are still engaged with a problem which had its remote but certain beginnings in the wantonness of Henry VIII, and in the rapacity of that aristocratic camarilla of adventurers which he planted round the throne of his son.[3]

Doubtless the debasement of the currency had harmful consequences for the poorer classes. Whether they were so hurtful as Mr. Rogers believes, it is difficult to say without close examination of his data. But it seems impossible to doubt that the rise in prices which certainly took place during the period was largely due to the influx of precious metals from the New World — to a cause, that is to say, with which the rapacity of English king or courtiers had nothing whatever to do.[4]

These evils were heightened, in Mr. Rogers' opinion, by Somerset's confiscation of the lands of the guilds, which

formed the benefit societies of the middle ages, and obviated . . . the necessity of legal relief to destitution. . . . We owe the English poor law to the greed of the courtiers [*etc.*].[5]

[1] Economic Interpretation, p. 34.

[2] History of Agriculture, IV, pref. p. vi. [3] *Ibid.* pp. xiv, xv.

[4] *Cf.* Cliffe Leslie, Distribution of the Precious Metals, in his Essays; and Mr. Rogers' own admission, History of Agriculture, IV, pref. p. xiii.

[5] History of Agriculture, IV, p. 6; *cf.* Economic Interpretation, pp. 36, 37; Work and Wages, pp. 346–348.

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Here again Mr. Rogers has pointed to one of the causes of the social troubles of the period: but it is still more likely than in the last instance that he has exaggerated its importance. It must be remembered that the printed evidence on the subject is most scanty. But the truth seems to be this: First, that the *village* guilds did not possess lands at all, and that the "church-ales," a very usual means of raising funds for the village poor, went on down to the seventeenth century.[1] Secondly, that the *religious* guilds in the towns did not, as a rule, "systematically relieve distress," and usually did no more than maintain a few old men and women in "hospitals," and that of these hospitals some certainly escaped confiscation.[2] Thirdly, that the *craft* guilds in the towns were by this time becoming close corporations, and that whatever advantages were derived from their funds were monopolized by small groups of families. The staple manufacture of the country, that of cloth, was at this time spreading from the towns into the rural districts, and probably the great mass of the population looked with no disfavor on any measure that weakened the town "mysteries."

We are next told that, now that the working man had been made poor by these means, the statute of 5 Elizabeth, which gave the justices the power of fixing the rate of wages, kept him so:

> This act of Elizabeth is the most infamous [of all the English statutes], for it was levelled against every right of the poor, even of the poor to live, and entirely in the interest of rent. . . . [It] consummated the degradation of the poor, made pauperism inevitable and misery universal.[3]

Now I am not inclined to argue that the country gentlemen acting as justices would be likely to show over-great generosity in the use of the authority thus committed to them. But before accepting Mr. Rogers' gloomy conclusion, we must notice

[1] Peacock, in *Archæological Journal*, vol. xl.

[2] For instances in which the confiscation was not carried out, see the cases of Lynn and Coventry in Dixon, History of the Church of England, ii, 462 n.; and for a hospital untouched, in this instance indeed unconnected with a guild, Greatham, Co. Durham, in Surtees, iii, 134.

[3] Economic Interpretation, pp. 240, 241.

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this very singular fact, that he scarcely mentions the one cause of distress which above all others was insisted upon by contemporaries: a group of influences which had been at work for probably three-quarters of a century, changing the face of England. This cause was the substitution of sheep-farming for tillage, with the consequent enclosures, elevation of rents, and distress among the unemployed laborers. As early as 1516 More had given this explanation of the hordes of beggars who terrified the country. The movement was accelerated by the change of owners which followed the dissolution of the monasteries. In the reign of Edward VI we find a small group of officials and churchmen, among them Hales and Crowley, struggling hard to have justice done and securing the appointment of a commission of inquiry, but altogether baffled by the selfishness of men in authority. One would have thought that Mr. Rogers would have seized upon the introduction of sheep-farming as a result of the increased cost of labor consequent on the black death. But no; his one reference to it runs thus:

> It is *possible* that sheep-farming, rent-raising, and attempts to aggregate farms may have increased the mischief. But I am entirely convinced that the four causes given above [currency, prices, guild confiscation, justices' assessments] are amply sufficient to account for it.[1]

The weakness of such a position Mr. Rogers would readily recognize, if some other scholar reversed his sentence and dared to say that Mr. Rogers' facts *may possibly* have contributed to the mischief, but that the agricultural changes are amply sufficient to account for it. Is not the truth this, that Mr. Rogers shuts his eyes to the slow results which follow from ordinary individuals following ordinary motives, and prefers to look for sudden acts of injustice on the part of the government? Had he looked at this side of the question, he would have been obliged to give the government credit for some attempts, at any rate, to mitigate the distress of the rural population; and his picture would scarcely have been so dark.

From this time onward, according to our author, the great body of the people remained in the degraded condition to which

[1] Economic Interpretation, p. 243.

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the statute of Elizabeth had reduced them. "The seventeenth century was one of unbroken misery to the workmen."[1] This conclusion is founded on a comparison of wages with prices. But here again, before we can accept the argument, we must know how large was the class engaged in agriculture[2] and wholly dependent upon wages — of persons, that is to say, without such a holding of land, or such a share in rights of common, as would represent a considerable addition to wages. One cannot base much on the silence of contemporaries, yet this silence makes it very probable that the seventeenth century was no longer troubled as the previous one had been by the difficulty of dealing with great bands of unemployed. Is it not at any rate possible that the wide extension of the domestic manufactures in the sixteenth and seventeenth centuries may have absorbed this surplus labor? And had there been any very severe and widespread distress at the time of the rising of the Levellers, would not that movement almost certainly have been of a very different character?

Against making the measures of Henry VIII and Elizabeth alone responsible for the troubles of our own days, there is still more reason. Upon Mr. Rogers' own showing, the first half of the eighteenth century was a period of prosperity compared with the preceding and succeeding centuries — "one of great plenty, high profits, low prices and increasing wages."[3] The justices, it is important to notice, had ceased by this time to issue their lists of wages. When we compare the condition of England in 1750, with its population of six millions and its general comfort, and its condition eighty years afterwards, with a population twice as large and a great part of the population half-starving, we cannot help concluding that the causes which had brought about this state of things were, very largely, *new* causes, operating within the period itself. Mr. Rogers briefly alludes to three causes of distress: the bad harvests, the old

[1] Economic Interpretation, p. 246.

[2] Mr. Rogers includes artisans with agricultural laborers in his general assertions, but the assessments printed by him in the History of Agriculture, VI, relate chiefly to agricultural labor.

[3] Economic Interpretation, p. 247.

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poor law, and the enclosures, with "the consequent exclusion of the poor from small agriculture."[1] The half-dozen words last quoted form, so far as I can discover, the only reference Mr. Rogers makes to the revolution in the relations of the agricultural classes which marked the period. But that revolution demands far more attention than this in a work which professes to trace the social history of England — if for no other reason than this, that it illustrates the intermingling of good and bad in economic development as in everything else. The process of enclosure was, indeed, in most cases prompted by the immediate self-interest of the landed gentry; but it was advocated by some of the most public-spirited men of the time, notably by Arthur Young, as absolutely necessary for improved farming.[2] Mr. Rogers has written with enthusiasm of the landowners who introduced the new agriculture in the first half of the eighteenth century; but the enclosures of the next eighty years were but a continuation and outcome of the same movement.

Even this omission, however, is excusable compared with another still more evident. After searching through the book again and again, nothing will be found about that vast alteration in the character of English manufacturing industry which may be roughly described as the introduction of the factory system. Whether or no we agree with Marx and his school in attributing to this one cause all the ills of modern Europe, it is certain that it has enormously contributed to them. When we see that the advent of the factory is everywhere, even in those countries whose condition is most unlike that of England, attended with similar consequences, we cannot but regard a treatise which professes to explain the present situation in England, and explains it only by the rapacity of a king and the greed of landowners three centuries ago, as taking a mischievously narrow view of its subject.

In such a book as *The Economic Interpretation of History* Mr. Rogers is seen at his worst. The passages in which he sums up his historical conclusions form, it is true, but a small portion of the work; but these conclusions underlie a large part of his

[1] *Ibid.* p. 246. [2] *Cf.* Prothero, English Farming, ch. vii.

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general argument; and it is from this book that most of his readers will derive their impressions of the course of English social development. The rest of the work, moreover, is taken up with the discussion of topics whereon our author cannot be regarded as speaking with any special authority. To the present writer it seems to present a curious jumble of valuable facts, shrewd remarks, hasty assertions and partisan bitterness. No economist can dispense with consulting the book when he has to deal with modern English topics; but it is not one to be put without warning into the hands of ordinary students. It is to be hoped, moreover, that readers outside Oxford will not suppose that the language Mr. Rogers permits himself to employ concerning some of the teachers and studies of that place [1] are the ordinary amenities of its academic life.

IV. *Conclusion.*

Mr. Rogers' position as an economist is hard to characterize. He is so inconsistent and yet so vigorous, so one-sided in his conclusions and yet so laborious, that the critic is torn in twain. Yet we may perhaps venture on some such verdict as this: As a theorician, Mr. Rogers has added but little to economic science: he seems, indeed, never to have realized the exact nature of recent controversy, or the point at which the discussion has arrived. But then, it is possible that the time for the construction of theory has already gone by. It is as an economic historian that Mr. Rogers is to be judged. Is it harsh to say that his own conclusions have contributed less to the understanding of the way in which England has become what it is, than the work of many other men who have not given to the subject one-tenth of the time and trouble he has devoted to it? For the middle ages does not the economist think of Nasse and Seebohm on agriculture, of Brentano and Ochenkowski on industry, of Schanz on trade; for the mercantile system will he not turn to Cunningham; for the eighteenth century, to Held and Toynbee, rather than to the works of the present

[1] See Economic Interpretation, pp. 70, 272, 273, 370.

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Oxford professor? Is it not because these men have been guided in their work by the idea of social evolution, of gradual, reasonable, undramatic development, and have known how to profit by the labors of others? Yet, after all, there stand the six volumes of the *History of Agriculture*, the fruits of more than twenty years' untiring industry. We can look upon them only as a collection of materials; but how great a collection it is! It will find its place by the side of Madox and Macpherson and Eden — nay, by the side of the *Fœdera* and the Statutes of the Realm — and what can one man wish for more?

W. J. Ashley.

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TOWN RULE IN CONNECTICUT.

THE present commonwealth of Connecticut traces an illustrious Puritan origin back to two colonies planted at nearly the same date but composed of settlers of different type and acting under divergent political impulses. The founding of New Haven was begun by a band of merchant pioneers led by the Rev. John Davenport and Theophilus Eaton, who have fittingly been called the Moses and Aaron of the original company which they brought by sea from Boston in 1638 and planted on the present site of New Haven city. Although that company was well endowed with worldly goods and was urged to its new settlement by the material motives of trade and wealth, it, curiously enough, under the masterful personality of Davenport and his sympathetic colleague, Eaton, established a church state in which membership of the ecclesiastical society was the condition of the suffrage; and for some years after it impressed the same sacerdotal rule on the near settlements which sprang from the parent stem. The story of this colony may here be traced but briefly. It fell into trouble; its mercantile ventures failed; its "great shippe" freighted with a large part of its wealth was lost at sea, and an attempt to found trading colonies on the shores of the Delaware was thwarted, with much loss to its projectors, by the Dutch and Swedes. A few years found the colony reduced to poverty and despair, its anomalous church rule relaxed and its authority hard pressed by the more thriving colony on the Connecticut river, by which, after a rancorous and wordy conflict, it was absorbed in 1664, when its separate story ends.

History, therefore, in its bearing on our present subject, focuses upon the rival colony of Connecticut, and goes back to its primitive three towns of Wethersfield, Hartford and Windsor, with which Agawam (now Springfield) in Massachusetts

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was temporarily joined. The three towns were planted by emigrants from Massachusetts Bay in 1634 and 1635, several years before the founding of New Haven. In June of the following year the three towns were reinforced and given fixity by the migration to them from Massachusetts of a colony of a hundred souls led by the Rev. Thomas Hooker. The new settlers were impelled to their exodus by controversies with the Massachusetts rulers concerning the powers of church and state which need not be rehearsed in this paper. Suffice it to say that Hooker's little band, traversing in an arduous two weeks' journey the wilderness between the river and the sea, gave the first firm settlement to the Connecticut colony and sowed the germ of the present commonwealth. The main stem of Connecticut's historical tree is rooted in the three towns which are still fitly symbolized by the three vines cut in the state seal.

Even in those far-away days and at the early dawn of the state, the scant records indicate that each town had its government by town meeting and its local officers. Such, at least, is the natural inference to be drawn from the situation of the little settlements, miles apart, in which some form of local regulation was imperative. Their more common interests were, for a year, controlled by a body of commissioners from Massachusetts; but in 1637 the primitive legislature appears, under the title of General Court, with not only six magistrates but deputies (committees) from the towns, which thus each assumed a representative entity and became an original legislative unit. Two years after, this form of government was confirmed by a set of organic laws (or "orders" as they were then called) which form the celebrated Connecticut constitution of 1639.

This renowned instrument, famed in civic history as the first written constitution ever penned in any land, deserves its prominence as the foundation rock on which Connecticut's present political system was placed. Who wrote it is uncertain; but its democratic principles and still more democratic temper point to Thomas Hooker, who, in a sermon preached in May, 1638, had declared doctrines of popular self-government far in advance of his times. Unlike Davenport in New Haven, who

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was a democratic theologian, Hooker, the Moses of the Connecticut exodus, was a theological democrat, holding fast to the idea of a broad suffrage, the consent of the ruled to their scheme of rulership, and the subordination of church to state. The constitution, which he inspired if he did not pen, and which was adopted at a sort of delegate convention held at Hartford on the 24th of January, 1639, omits all reference to the King as well as to the parent Massachusetts colony; substitutes the imperative words "it is ordered, sentenced and decreed" at the opening of each article in place of the old conventional English form "be it enacted," and abounds in other phrases which show that it was a sort of declaration of democratic town independence as well as an organic code of laws. It provided for the election of not less than six magistrates besides the governor, and also for four deputies from each of the three towns. These magistrates and the governor had to be chosen from the patrician class of freemen, made up presumptively from the original freeholders; but the voters included the "admitted inhabitants," a group almost large enough to imply universal suffrage. It attests strikingly the advanced ideas of Hooker and his associates that their constitution provided that a plurality vote at the town meetings should elect the magistrates and governor, the language as to the latter being "he that hath the greatest number of papers [votes] shall be governor for that year"; while the theory of proportional representation was asserted in a clause which set forth that the number of deputies from any newly admitted towns should be "a reasonable proportion to the number of freemen that are in said towns." It is a curious fact, also, that those who defend the existing system of Connecticut representation on the ground of antiquity appear, until lately, to have quite overlooked these provisions of the ancient constitution, which prove that the fathers of the commonwealth laid its foundation broader than the structure which their posterity has reared.

Throughout this antique constitution the idea of town entity in the little federation as well as of town autonomy is conspicuous. In matters apart from the somewhat vague authority

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granted under the compact, the towns had control of their local affairs. The "town unit" was recognized in the arrangement for separate sets of deputies from each, elected at town meeting; and there was a provision by which the towns, in case the governor and magistrates usurped powers, could, acting in separate capacities, create a new legislative body. The old constitution, however, did little more than ratify a system of town rule that had existed previously as the natural outcome of the condition of independence and isolation in which the early Connecticut settlements were placed. It gave popular consent and formal certification to an antecedent fact.

II.

Under that old constitution of 1639 Connecticut's laws were made and administered until 1662. But in 1661 the colony, craving a royal guaranty of its own existence, sent Governor Winthrop as a commissioner to the court of King Charles the Second. Winthrop succeeded in securing for the colony in 1662 a charter so liberal in its concessions that historians variously attribute it to the uncommon shrewdness of the commissioner, to his dextrous use of money at the corrupt court, and to the profound ignorance in England as to the importance of the remote Connecticut colony. Aside from the immense geographical boundaries which the charter assigned to Connecticut (reaching westward to the Pacific ocean), it was practically not much more than a confirmation by royal patent of the old constitution. It continued the former system, with a governor, deputy governor, twelve magistrates (thereafter, until 1819, called assistants) and deputies from the towns — all chosen by the suffrages of the voters at town meetings. It, however, limited the number of deputies to not more than two from each town; and in the provisions for the election of these deputies, as in those concerning the choice of governor and assistants, the words "major part" of the voters suggest election by majorities and not by pluralities. This interpretation of the charter is somewhat strengthened by a later enact-

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ment (1742) of the General Assembly,[1] according to which, in the event of a clear majority of the popular vote not being cast for the governor and other officers, the legislature assumed the power of electing them. No such law would have been passed had the words of the charter been deemed explicit and final.[2]

Except during sixteen months — beginning on the 31st of October, 1687, when the old government was suspended by the autocratic Andros — Connecticut governed herself, nominally at least, under the King Charles charter from 1662 until 1818. During that long span of 156 years there were some essential modifications of her system, but none that seriously affected the powers of the towns or altered the principle of representation. In 1666 four counties were organized, and early in the eighteenth century the judicial powers of the governor and assembly were modified by a new set of courts. In 1698 it was ordered that the General Assembly, instead of legislating as a single body, should consist of two, — the assistants and deputies, — and that both must assent to a bill before it became law. It was enacted in 1707 that the voters could go outside the assistants and choose any freeman as their governor.[3] As new towns were taken in, the size of the lower house grew rapidly. In 1784 five cities — New Haven, Hartford, Middletown, Norwich and New London — were incorporated. As to the representation from the towns, the changes were trifling. In general each town, on entering the Connecticut federation, appears to have taken the full privilege of choosing two representatives by the terms of the charter. The meagre legislative records of the middle of the eighteenth century show that four

[1] The charter name of the legislature.

[2] It will thus be noted that the transfer of the election of the governor and other state officers to the legislature when a majority vote is not polled by the people, which is now an active question in Connecticut politics, originated not in the old constitution nor in the King Charles charter, but in a simple rule of the legislature itself, which, up to the adoption of the constitution of 1818, any subsequent legislature could have repealed.

[3] At one election in the autumn the voters in town meeting voted for twenty persons, who were thus formally put in nomination, and, from them, the governor and twelve assistants — the lineal predecessors of the present Senate — were chosen by a second election at the town meetings in the following spring.

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towns which, on dividing, consented to take one representative, were afterwards given two members. In the interval between 1778 and 1790 many new towns were admitted with only one. This, however, was done, it appears, not as a formal legal precedent but as a sort of temporary rule, prompted by the growing cost of paying legislators and the small size of the representatives' chamber. But under it, oddly enough, several thriving and populous towns of the state have had but one representative until this day.

III.

The year 1818 opens the third and present constitutional epoch of Connecticut. In that year the Federalist and theocratic party of the state, after a long struggle reaching over years of savage politics, were defeated by the union of the Democrats with the dissenting sects that were seeking the overthrow of the Congregational church establishment. The outcome of the protracted and bitter strife[1] was the constitutional convention which gave, seventy-one years ago, her present fundamental law to Connecticut. Aside from the uprooting of the state church, the constitution made no fundamental change in the old forms of government. Briefly sketched, its provisions for representation were as follows: It gave each town the number of representatives it had before. If a new town was created, it was allowed but one representative; and the old town from which it was taken could not have its representation cut down on account of the division save with its own consent. The method of choosing the members of the upper house (senators) was left essentially unchanged.

It was not until 1874, when the absurdity of allowing but one representative to several new towns which contained cities (notably Bridgeport with 29,148 inhabitants) was clearly seen, that a constitutional amendment was adopted giving all towns

[1] There is a popular tradition in Connecticut, probably unfounded, that Dr. Lyman Beecher, then settled at Litchfield, hid his bible in a haystack on hearing the election returns which showed the triumph of the Democrats and "Toleration" party. Mrs. H. B. Stowe, in her Poganuc People, gives an interesting sketch of the times — which, however, does scant justice to their fierce and brutal politics.

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with a population of five thousand or more inhabitants two members of the lower house; and in 1876 another amendment enacted that no new town should have a representative unless it contained twenty-five hundred inhabitants and unless the parent town, from which its major part was taken, had the same number. The Senate, meanwhile, by an amendment passed in 1828, was changed from a popular to a quasi-territorial body strongly permeated with the town idea. It was provided that, instead of being chosen on a general ticket, the senators should be elected by districts; the number of districts could not be less than eight nor more than twenty-four (the present number); no town could be divided in making a senatorial district nor could the number of senators from any county be less than two. Unless a clear majority of the electors of the state voted for a candidate for governor, the election was to go to the "town-made" legislature, where, in joint session of the two houses, the governor was to be chosen from the two candidates highest in the voting returns. The other state officers were to be chosen in a similar manner.

The too meagre journal of the constitutional convention of 1818 shows that Robert Fairchild, of Stratford, offered a motion to give two representatives to towns of four thousand inhabitants or more, and to all other towns one; but it was defeated. The motion was renewed, with twenty-five hundred and then with two thousand substituted for four thousand; but in both cases it was voted down. A clause setting forth that the legislature should have power to reduce the number of representatives, provided that there should be always one from each town, suffered the same fate; and the provisions for representation, as they now stand in the body of the constitution, were adopted by a vote of 112 to 72. By a vote of 127 yeas to 52 nays town rule in the legislature was still further expanded by allowing a simple majority in the legislature to override the governor's veto. The hold of the towns on the legislature was clinched by making it impossible to amend the constitution except by a majority vote in the lower house of one legislature, a two-thirds vote of both houses in the legislature next succeeding and

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nally a ratification by the people. As Connecticut legisla-ures were made biennial in 1886, the gauntlet of time which a onstitutional amendment must run is doubled and town rule ill more strongly riveted on the state.

The foregoing review of the method of constructing Connec-cut legislatures shows the persistent dominance of the town rough all the constitutional changes. In justice to the men ho framed the present constitution in 1818, it must be said at they did their work in the deep shadows of the township adition. They had seen that plan during one hundred and enty-nine years successful both in its relations to the common-ealth and in its local autonomy.[1] They had witnessed, in e more momentous convention which in 1787 adopted the onstitution of the United States, the old "Connecticut idea" two houses, one popular, the other territorial, triumphing ter a long contest; and even as early as 1818, historians and atesmen had begun to lavish praise on the town idea as devel-ed in the Connecticut polity. In 1818 no grave inequalities the towns had begun to disturb their federative poise. There ere five cities, or rather urban towns; but New Haven, e largest, had by the preceding census of 1810 a population

[1] The autonomy of the New England town, which has been so much extolled and ich has reached its highest development in Connecticut, is a subject too broad for scope of this paper, which is limited to the relations of town rule to the state. may be stated, however, that in Connecticut the town autonomy still works fairly ll, as a whole. Its gravest defects are in the towns containing cities, where (ex-t in New London and Bridgeport, which have their city and town governments solidated) the system still imposes a clumsy and expensive triple administration. er defects have appeared in abuses of the system of poor relief, in fiscal methods repairing roads and bridges, and in failure of the towns, under the option allowed the state statute, to provide properly for public school education, shocking laxities which are exposed in the last report of the state board of education. Another evil ich developed some years ago in the town autonomy was too lavish "town aid" railroads, which had to be checked by constitutional amendment in 1877. It is also eworthy that a report to the state comptroller, made this year (1889), shows that 145 of the 167 towns in the state have floating debts, that only five towns report no ebtedness whatever, and that the tendency of the local debts is to increase. As road rule it may be asserted that the state statutes relating to local government of Connecticut towns, which are of a very general character, work pretty well in the rage town, but fail at the two extremes; namely, in the towns containing cities the one hand, and in the "poor" country towns with small population on the er.

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of but 6967; and two of the urban towns, Norwich and New London, with 3588 and 3238 population respectively, were considerably exceeded by the eight towns of Litchfield with 4630 Groton with 4451, Stamford with 4440, Lyme with 4321, Fairfield with 4125, Wethersfield with 3961, Saybrook with 3926 and Guilford with 3845. The whole state, with a population of 261,942, contained but 120 towns sending 201 representatives. Now it has an approximate population of 722,517,[1] with twelve cities and 167 towns sending 249[2] members to the lower house.

IV.

The even poise of the Connecticut towns in the federative scale, so long maintained during the primitive epoch of the commonwealth, has been rudely disturbed during the last half century by two forces, working in unison but at opposite ends of the balance. One has been the swift growth of the cities, the other the simultaneous decline of the agricultural towns. Migration to the West and the drift of rural population to the cities and factory villages, so familiar all over New England, have been peculiarly forceful in Connecticut. The following table shows vividly this readjustment of her population:

	In the whole state.	In the cities.	Per cent in cities
1800	251,002	24,131	9.6
1810	261,942	25,118	9.6
1820	275,148	28,671	10.4
1830	297,675	36,894	12.4
1840	309,978	51,721	16.7
1850	370,792	75,756	20.4
1860	460,147	124,579	27.1
1870	537,454	190,973	35.5
1880	622,700	244,558	39.3
1889 (est.)	722,517	335,235	46.4

[1] When population in 1889 is cited in this article, the figures are derived from the election returns of November, 1888, multiplied in each case by 4.7, the ratio of population to vote in the state as disclosed by the census and presidential election returns of 1880.

[2] By the division of the large town of Derby at the last session of the legislature the lower house is increased to 251 members and the number of towns to 168.

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The table next following is perhaps the most comprehensive any that can be prepared to depict Connecticut's present unalanced scheme of representation. It indicates, in comparion with the whole state, the total number of votes (Republican, emocratic, Prohibitionist and Labor) thrown at the last presential election in towns which had each less than three ndred electors, together with the number of representatives which each town is entitled:[1]

	Total vote.	Representatives.		Total vote.	Representatives.
rlington	269	1	Eastford	177	1
st Granby	199	1	Hampton	157	1
rtland	169	2	Pomfret	272	2
rlboro	89	1	Scotland	132	1
wington	204	1	Sterling	219	1
cky Hill	259	1	Barkhamsted	176	2
acon Falls	78	1	Bethlehem	163	1
thany	139	1	Bridgewater	167	1
ddlebury	128	1	Canaan	277	2
ford	228	1	Colebrook	227	2
ospect	114	1	Goshen	211	2
olcott	107	1	Harwinton	240	2
odbridge	196	1	Morris	161	1
zrah	214	1	Roxbury	254	1
anklin	146	1	Warren	151	1
dyard	264	1	Durham	223	2
sbon	141	1	Killingworth	180	2
me	248	2	Middlefield	192	1
d Lyme	268	1	Westbrook	239	1
lem	141	1	Tolland	282	2
rague	211	1	Andover	117	1
luntown	211	1	Bolton	125	1
ookfield	247	1	Columbia	184	1
ston	241	1	Hebron	270	2
nroe	268	1	Union	118	2
w Fairfield	168	1	Willington	214	2
erman	189	1	Avon	263	1
eston	207	1	East Haven	227	1
hford	251	2	North Branford	219	1
nterbury	273	2			
aplin	147	1	Total (60 towns)	11,851	76
The whole state				153,978	249

[1] This table appeared in correspondence of the writer printed in the New York *ening Post* of Nov. 28, 1888.

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The sixty small towns cast, all told, about one-thirteenth of th whole vote of the state, yet elected more than three-tenths o the 249 members of the lower house. On a strictly propor tional basis of representation, they would have chosen but nine teen, or one-quarter their present number.

A glance at a third table will show the striking disproportio between the representation of Connecticut's little towns an that of her two largest cities:[1]

	Total vote.	Representatives.
Sixty small towns	11,851	76
New Haven	17,827	2
Hartford	11,331	2

Averaging the sixty small towns, or taking them collectivel as a single district, a vote in one of them had the same numer ical weight in legislation as about fifty-seven votes in Ne Haven or thirty-six votes in Hartford.

But the most significant comparison is between the tw extremes of the scale — New Haven and the remote decayin town of Union in Tolland County:

	Assessed property.	Population.	Total vote.	Representative
New Haven . .	$49,565,985	83,694 (est.)	17,827	2
Union . . .	135,504	555 "	118	2

One voter in Union at the last election cast a ballot that wa the legislative equivalent of 151 ballots in New Haven. If citizen merely changes his residence from Union to New Have he loses *ipso facto* one hundred and fifty one hundred and fift firsts of his voting manhood, as measured by his influence o

[1] In each case where the population, vote and wealth of the cities are referred in the tables, they include also those of the town districts lying just outside of t cities. In every material aspect the difference between the town and the includ city is so slight that it is ignored. Nothing more impressively shows the persisten of the Connecticut town idea than the fact that all the cities in the state (except Ne London and Bridgeport), besides their own urban government, must maintain al the ancient town and school district régime, making a most complex and expensi triplicate system. In New Haven, for example, every year town taxes are still vot at "town meetings," attended by a few score citizens of every grade who sometim pass on fiscal questions involving hundreds of thousands of dollars. Of course su gatherings are easily "packed" and are prolific of public scandals.

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Connecticut's law-making and in choosing state offices through the legislature. In other words, he is essentially disfranchised.

Two other groupings of the towns and cities show the system in a very fantastic light. One, on the basis of the twelve Connecticut cities, gives the following figures:

	Total vote.	Representatives.
New Haven	17,827	2
Hartford	11,331	2
Bridgeport	9,160	2
Waterbury	5,914	2
Meriden	4,967	2
Norwich	4,475	2
Danbury	3,979	2
New Britain	3,724	2
Norwalk	3,660	2
Middletown	2,746	2
New London	2,624	2
Rockville (Vernon)	1,626	2
	72,033	24

The twelve cities, with approximately one-half of the vote of the whole state, had but a fraction more than two twenty-firsts of the lower house. A comparison of the same twelve cities with the four rural counties gives the subjoined table:

	Total vote.	Representatives.
Twelve cities	72,033	24
Rural counties:		
Litchfield	12,354	41
Windham	7,673	24
Middlesex	8,251	22
Tolland	5,391	22
Total	33,669	109

The twelve cities, with more than double the vote of the eight counties, had but about two-ninths of their representation.

Perhaps the most anomalous contrast of all can be seen in two groups of "old" towns, neither of which includes cities. It is accounted for chiefly by the failure of the constitutional

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convention of 1818 to provide for disparities in the divisions or growth of towns:

Towns.	Year of incorporation.	Total vote.	Representatives.
Huntington	1789	805	1
Branford	1644 (settled)	859	1
Hamden	1786	748	1
Waterford	1801	596	1
Stratford	1639 (settled)	1,150	1
Plymouth	1795	511	1
Total		4,669	6
Hartland	1761	169	2
Union	1734	118	2
Ashford	1710	251	2
Willington	1727	214	2
Colebrook	1779	227	2
Durham	1708	223	2
Total		1,202	12

The provision in the present constitution against the division of towns in making senatorial districts, and which allots to each county not less than two, has produced a singular inequality in the state Senate, which, as at present constituted, is a hybrid body, neither territorial nor popular, but saturated with the town idea of representation. It is illustrated in the appended table:

Number of district.	Total vote for senators.	Number of senators.
I (Town of Hartford)	11,285	1
VIII (Town of New Haven)	17,649	1
Total	28,934	2
XXIV (part of Tolland County)	2,585	1
XXIII (part of Tolland County)	2,786	1
XX (part of Litchfield County)	3,360	1
XXI (part of Middlesex County)	3,982	1
XXII (part of Middlesex County)	4,004	1
XIX (part of Litchfield County)	4,133	1
XVIII (part of Litchfield County)	4,217	1
XVI (part of Windham County)	3,733	1
	28,800	8

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It is thus shown that the two large urban senatorial districts had but one-fourth of the representation in the Senate allotted to eight rural districts which cast in the aggregate 134 fewer votes. It suggests the vantage given in the Senate to the dominant (Republican) party, under the present plan, that the seven present Democratic members of that body, numbering less than one-third of the full Senate, represent districts which at the last election cast 64,016 votes, or about three-sevenths of the votes of the whole state. The senatorial districts under the existing plan are easily gerrymandered, and such is their condition at present.[1]

Inequalities in the congressional districts, though connected more remotely with the town system, are in one instance curious:

	Total vote.
Second District (New Haven and Middlesex Counties) . .	50,275
Third District (Windham and New London Counties) . .	23,520

As an exponent of the relation of taxation to representation, town rule in Connecticut is most grotesque, as the two following tables indicate:

	Assessed property.	Number of representatives.
Ten cities:		
New Haven	$49,565,988	2
Hartford	48,575,184	2
Bridgeport	16,110,855	2
Waterbury	10,030,532	2
Norwich	13,186,569	2
New London	7,699,321	2
Meriden	10,408,442	2
New Britain	6,872,863	2
Norwalk	5,715,498	2
Middletown	8,225,655	2
Total	$176,390,907	20

[1] It would evidently be unwise to return to the old system of choosing the Connecticut Senate on a general ticket — a system which would usually make that body consist entirely of members of the dominant party. The best plan, probably, for remedying the existing inequalities is to apportion the state into twenty-four districts as nearly equal as possible in population, and, to that end, allow counties and cities to be divided. Even this would not obviate gerrymandering — an evil of partisan politics which it seems impossible to remedy, except, perhaps, by some scheme for minority representation.

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	Assessed property.	Number of representatives.
Ten small towns:		
Union	$135,504	2
Hartland	201,858	2
Willington	229,901	2
Tolland	343,532	2
Ashford	265,144	2
Killingworth	217,660	2
Lyme	273,296	2
Harwinton	441,732	2
Durham	476,645	2
Canterbury	484,418	2
Total	$3,069,690	20

The ten cities have assessed property amounting to a little less than one-half of all the assessed property ($352,795,926) in the state, while the ten towns have but one one-hundred and fifteenth part. Of the ten towns seven showed a marked decrease of taxable property for the last year reported, as compared with the year preceding, illustrating the general law of decay in the farm towns.[1] It can also be shown that the ten towns named received last year from the state, in the form of payments for their public schools and pay of representatives, the approximate sum of $8785, while they paid to the state only about $4811 in taxes.

It will be observed that in the slow but steady development of town rule it has come to preponderate immensely in every department of Connecticut polity. It not only controls the lower house and powerfully affects the Senate, but, whenever

[1] Figures compiled by Mr. George E. Sill, of Hartford, show that forty-five towns of Connecticut, whose industry is exclusively agricultural, decreased in wealth from 1865 to 1876 to the amount of $1,893,172, or seven per cent. During the same time the wealth of the state increased 29 per cent. In the period from 1876 to 1886 the forty-five farm towns lost $2,741,520, or eleven per cent, while the wealth of the whole state decreased two per cent during the same decade. Between 1860 and 1880 the population of the state outside these forty-five towns increased 163,285, or over 38 per cent, while that of the towns decreased one per cent. Mr. Sill adds: "Of the 167 towns in the state, 111 are worth less to-day than they were in 1876, while the great gain may be found in the cities." The forty-five towns which Mr. Sill refers to send sixty-four representatives — about one-quarter of the whole number — to the Connecticut lower house, although they contain only about one-sixteenth of the wealth of the state.

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state officers are chosen by the legislature, reaches with a mailed partisan hand into the executive branch and secures, through the nomination of the governor, the minor places of state. Custom, in Connecticut, has made the higher state judiciary non-partisan, and one or two of the state commissions are not made up entirely under the spoils theory. But the lower and municipal judgeships — except judges of probate — and the county commissions are filled by nomination of a petty county caucus of representatives of that party which happens to control the legislature, and thus fall within the domain of the spoilsmen. When a third organization of moderate strength has candidates in the field at a state election, the party that secures a plurality is likely to be defeated repeatedly, and the candidates that were second in the returns secure the state offices and patronage. This has now taken place at three successive elections, and Democratic pluralities of 1636 in 1884, of 1878 in 1886, and 1415 in 1888 have been overruled by Republican legislatures which chose the minority candidates; and the same result is likely to repeat itself indefinitely so long as the Prohibition party takes the field. With the present scheme of representation, discriminating as it does against the cities, it is easy to imagine a party plurality as high as ten thousand votes thus nullified. What makes this branch of the system very inconsistent is the fact that the presidential electors of the state are chosen by a plurality, as are the town representatives and senators whose joint votes nullify popular pluralities for state offices. As a measure of the wide divergency between the legislative and the popular vote, it may be noted that, though the Democratic candidate for governor received last November a popular plurality of 1415, yet the legislature then elected chose his opponent by a joint vote of 159 to 95.

V.

The radical unfairness of Connecticut's alternative method of choosing her governors, its injustice to the party which, after securing a plurality of the popular vote, is deprived of all share and responsibility in the executive branch of state management

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and the resulting dangers to state loyalty and patriotism, are too palpable for extended comment. Although parties are slow to surrender political vantage, and minority governorships are intrenched behind the iron-clasped clauses of the state constitution, they must yield ere long to the steadily waxing popular sense of justice.

The defenders of this secondary method of choosing governors rarely employ argument;[1] but, when they do, they use two alleged analogies. One is the federal statute that requires a candidate for United States senator to obtain, before election, a majority of the legislature in joint session of the two houses. The natural theory of this is that the sifting process of balloting selects, finally, the fittest survivor. Whether such a theory now holds in practice, when the successful candidate is apt to win at last by craft, by deals, by combinations or by more sinister influences of mechanical politics, rather than by personal merit, may well be doubted. But, accepting the theory, the forcing of a deliberative body to take repeated ballots for the purpose of winnowing out the more unfit aspirants is manifestly a different proposition from the transfer of an election from the people, the fountain-head of political authority, to a different body — and that, in Connecticut, a decidedly unrepresentative one. Scarcely more illogical would it be, in case the legislature failed to choose a governor by the majority, to shift his election to an extraneous body like the supreme court of the state. The other analogy used by the advocates of the alternative choice of governors is the transfer of the election of our national Presidents to the federal House of Representatives when there is no majority for a candidate in the electoral college. In regard to this reasoning, it must be remembered that the framers of the federal constitution presupposed that the electoral-college groups would usually deliberate and agree before they reached a vote, and would not become the phantoms that they are now; and, in any case, there must be grave mis-

[1] There is very slight defence of this branch of the Connecticut system offered either in the press or the legislature, the beneficiary party relying almost entirely on its legislative *vis major*.

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givings as to the intrinsic virtues of our electoral-college plan, which may shift the election of a President to a House chosen two and a half years before and very probably on other popular issues than those made prominent at the presidential canvass in which the electors were chosen. The two analogies are both of dubious merit *per se*, and one of them is quite illogical in its application. Neither will hold unless it be asserted that two imperfect similes make a valid reason.

On the other hand, as regards state legislation, the inequalities of Connecticut representation and the archaic town idea in which they are so firmly imbedded must be tested by the different standard of actual results. While clearly violating that dictum of proportional representation which the American theory of self-government by the people asserts, there is, nevertheless, a very substantial offset if it can be proved that in Connecticut town rule has been successful as well as historical. The question has two sides, but the weight of evidence lies heavily against the present overwhelming domination of the towns. While the fitness of town rule for the needs of the commonwealth before the present century cannot be gainsaid, the plan in these later days has so many fundamental defects that it cannot be pronounced satisfactory, at least not in any absolute sense.

The years since 1818 have wrought a vast change in the social, moral, political and economic condition of the New-England country township. In the old days the town was a far more symmetrical community than it is now. The interests and the emotions of rural society focused more perfectly within the town limits. At an epoch before railroads, telegraphs, telephones and daily newspapers, and when a journey to the nearest city by the clumsy stage-coach was the red-letter event of a human life, each town, with its villages, had to create its own social orbit. Hence the township life was more localized, more centripetal, more intense. It expressed itself both in personal feelings and in social or civic forms from which Yankee communities are now fast drifting away: in a keener neighborly spirit; in more eager interest in the contentious but educational town meetings; in more frequent occasions of intercourse, such

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as the village lyceums, the sewing societies, singing schools and ordinary social gatherings. The theocratic church alone, with its pastor invested with well-nigh pontifical dignity, was an immense factor in centering and vitalizing the town idea which permeated the whole life of the rural citizen. In politics the old-fashioned country squires — now a nearly extinct type — took the lead; and the ancient records show that they went to the legislature year after year, sometimes for half the span of their natural lives. The lists of the General Assembly of Connecticut furnish conclusive evidence of the extent to which this rational custom of re-election prevailed among the rustic voters of the old time, and show how completely, during the later decades, the practice has changed:[1]

	Whole number of representatives.	Re-elected from previous year.	Per cent re-elected.
1790	171	109	63.7
1800	189	102	54.0
1810	199	83	41.7
1820	204	53	26.0
1830	208	47	22.6
1840	212	27	12.7
1850	222	27	12.2
1860	236	30	12.7
1870	239	24	10.0
1880	246	23	9.3
1889	249	13	5.2

As a class, those antique Yankee legislators were undoubtedly cramped in their views on party and church, and were not wide-minded in the latter-day meaning of the term. But they made up for these defects by their crystalline integrity, by their sober common sense, by their trained familiarity with the relatively few topics which then were the subject-matter of law-making. With them as its exponents, town rule worked out in state legislation results which were usually practical and always profoundly patriotic in motive.

How radical the change which a few decades have made in

[1] In the appended figures there are probably a few immaterial errors, as the table involved the comparison by the writer of nearly five thousand names of members of the General Assembly.

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the status of the Connecticut town! Where it used to be centripetal it is now centrifugal. Its local interests have been decentralized and distributed, its unity impaired. The young men, the sinews of its body, have drifted to the cities or migrated to the richer soils of the West. Agriculture has become profitless, and foreigners have occupied the farms to eke out, by the most close-fisted economies, a scant subsistence where the old yeomanry lived, if not in luxury, yet not in want. In politics, bribery, open and unblushing, has sapped the *morale* of the rural constituencies. The position of a member of the state legislature, which used to be haloed with dignity, is now become a place too commonly sought from material motives, a perquisite more than an honor. As this fiscal view of the office of legislator has gained acceptance, it has brought in its train the "rotative" notion, the most baneful agency of all in lowering the *personnel* of Connecticut's law-making body. In a large proportion of the smaller towns it has become a tradition that a representative, once elected, has exhausted his claim to the office; and only at the peril of a local split in his party can he seek a re-election. Each citizen of moderate prominence in his party must take his turn and the place be duly passed around. The table already printed shows the evolution of this rotative custom with a certainty which cannot be impugned.[1]

The legislature, thus made up on the theory of mutation and, to a certain degree, by agencies more malign, contains naturally many elements of weakness. Its members, having been rarely or never elected before and entertaining slight hopes of returning, are both untrained in legislative methods and without personal inducement to become so. There is for them no stimulus

[1] The small number of voters in a rural town, of whom only a part attend the nominating caucuses, gives the circle of rotation a limited circumference and the "rotative" claim fuller play. A representative of one of the smallest towns in the present Connecticut legislature fixes the average attendance in his town caucus, to nominate two representatives, at twenty-five — this, not because there is lack of interest in the caucus, but because the absolute number of voters is so small. In another Connecticut town, at the last election, the dominant local party cast forty-two votes for president.

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to "make a record," as the modern phrase is. The leaders of ability are few and for that very reason they are more masterful and their followers more subservient. Parliamentary stratagems and the wiles of the lobby trap many victims from crass ignorance; and corruption avails itself of this, in the large lower house, by exercising itself upon the leaders. A prevailing and very pernicious notion among many of the bucolic legislators is that they must utilize their single session in "having a good time" — an aim that must be fatal to the sense of high responsibility as well as to the legislative promptitudes. Intellectually, the modern town-made representative in Connecticut is competent for the more simple sort of legislative questions. Topics relating to bridges, roads, fisheries, trespass, *et id omne genus*, as also the simpler branches of more intricate subjects, he is abreast of. But matters of more complexity, that exact broader generalizing and scientific treatment, like taxation, corporations, and the courts, — the myriad of problems forced on statecraft by modern civilization in a commonwealth filled with great vested interests, — are beyond his intellectual grasp.[1] It goes without saying that such a body has obstinate local prejudices and is pretty rigidly partisan. The large size of the lower house does something to preserve it from direct corruption.[2] This, when employed, generally concentrates on the Senate, which has become notoriously the stronghold of corporative influence.

VI.

Where is the remedy? How is it to be found and, when discovered, how put into efficient action? It must be frankly

[1] Concrete examples of legislation to prove these traits could be cited without number.

[2] The greatest contest in the annals of Connecticut legislation was fought in the lower house, last spring, over the question of allowing a rival corporation to "parallel" the main line of the New York, New Haven and Hartford Railroad company. At its close there were abundant and very specific charges of direct and indirect bribery. Similar exposures in the large New Hampshire lower house, during the great railroad contest some two years ago, go to indicate that successful corruption of large legislative bodies is a question not of their size, nor of the character of their members, but of the magnitude of the interests at stake.

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conceded that even an imperfect answer to this query is difficult, a complete answer impossible. Some of the evils are connected with political problems that are vexing our epoch in every state and country where constitutional government and a liberal suffrage prevail. Corruption at the polls, the declension of legislative character, civic jobbery, the greed for official pelf — these evils are not restricted to Connecticut. They are national, and their redress is to be found, if at all, by slow and tentative reforms. Town rule in Connecticut, so adequate for simpler days and men, has not firmly resisted the impact of these political ills, but neither have they been mastered in other states where the town idea has been absent or less potential.

The Connecticut advocates of town rule (who, as was to be expected, are found almost exclusively in the party that profits by the system) admit the disparities of representation and its undemocratic spirit. But they contend that an enlargement of representation from the cities gives no assurance of betterment. They aver, and with plausibility, that neither in Connecticut nor in other American commonwealths has the influence of the cities or the character of their representatives been such as to improve either the mental scope or the moral integrity of legislative bodies.

In the case of the Connecticut cities this argument has a substratum of fact. While the cities have often sent to Hartford men of prominence and character, their representatives have too commonly, of late years, been second-rate and sometimes quite unfit. But for this evil the existing misrepresentative scheme, which allots but two members to each of the urban towns, is largely responsible. In the urban towns the two candidates for the lower house of the legislature are now nominated by a town convention[1] composed of delegates chosen at ward primaries. Experience has demonstrated that the better kind of citizen will rarely attend a primary at which he does not vote directly for a candidate. In consequence, the quality

[1] It is, of course, really a convention of delegates from a city acting in its town capacity.

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of the town convention is lowered, and with it the quality of the candidates whom it puts in nomination. Representation in the legislature falls into the vortex of general city politics, with its bargains, intrigues and often viler forces that decide the nomination. The partial remedy — there can be no radical cure — is to grant the cities fairer proportional representation and divide each municipality into assembly districts which, in many cases, would probably coincide with the wards.[1] Many of these wards in the Connecticut cities (indeed, the larger number) are as yet peopled by respectable voters, whom personal knowledge of the candidates would urge into the nominating ward caucus. The politics of the various wards, so far as they relate to the candidates for the lower legislative house, would thus be more strictly localized and would be closely assimilated to those of the small towns where the personal acquaintance which each voter has with the candidate is the one check that is left on the deterioration of legislative character.[2] While the representatives sent from the lower wards would undoubtedly be inferior, the gross result would be a decided gain over the limited representation now derived entirely from "machine" politics, ratified by electors who have no personal criteria to stimulate them to intelligent and independent voting. In this connection it

[1] This system with some variations has been adopted by Massachusetts, Maine and New Hampshire; but it would be impossible to review its results intelligently without local and direct study. In Vermont, on the contrary, the legislative system is a close copy of that in Connecticut, from whence the former state was partly settled. Each of her 243 towns has but one representative in the lower house; and of her thirty senators the fourteen counties have each one, while the remaining sixteen are apportioned according to population. Her system of representation is therefore not much more popular than in Connecticut, yet works satisfactorily. But Vermont has not had her town-rule equalities disturbed by the growth of cities. Her largest towns are Rutland, with a population (1880) of 12,149, and Burlington with 11,365, and the population of the state remained almost stationary during the decade from 1870 to 1880. Her political and social status is therefore not essentially different from that of Connecticut in 1818, when the wisdom of the constitutional convention of that year ratified the town-rule theory which had so well endured the tests of almost two centuries.

[2] In the ordinary Connecticut town the caucuses to nominate representatives are well attended and the interest in them of citizens of every class is satisfactory. This would go far to improve the quality of the nominations, if it were not for the mischievous custom of rotation.

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should also be emphasized that the abolition of legislative governors would further tend to raise the standard of the lower house. The voter who has a good party candidate for governor, but a bad one for representative, is less likely to "bolt" the latter so long as the candidacies of the two are blended.

It is true that, as the cities increase in size, the district system gives unsatisfactory results. The better class of citizens move to the suburbs, the "slum" wards relatively increase, and the interest of respectable voters in local politics slackens. New York city, with its assembly districts which send so shabby a type of representatives to Albany, will occur as an extreme example. Still, it is only when cities reach their hundreds of thousands that this evil becomes flagrant; and long before that time is reached in Connecticut, the advance of the cities will have forced simply by its own momentum some readjustment of the present constitutional scheme of representation.[1] With almost one-half of the population and more than one-half the wealth of the state already in the cities,

[1] In addition to the constitutional obstructions to a change of the present system in Connecticut, the reform is delayed by the timidity of the Democratic leaders, who are slow in forcing the question on account of their fears of the opposition of members of their own party in the little towns. It is constantly urged that a remedy can be found in a constitutional convention to revise the fundamental law of 1818. But even if a town-made legislature can be induced to vote for such a convention, the body would itself be town-made and the result of its deliberations would be somewhat doubtful. A scheme of a pretty radical character to evade the spirit of the constitution while fulfilling its letter has begun to be discussed and may yet, in case of Democratic ascendency in a single state legislature, be put in practice. It involves the proposition that, when a city and a town government have been consolidated, the wards should be incorporated as towns, each having its two representatives. Under the constitution each of these ward-towns would have to choose its board of selectmen and town clerk; but, except in making new voters, the duties of these officers would be nominal, the new "town" being largely a fiction and created only to enlarge the representation of the cities. The change would be revolutionary in fact but regular in form. That so bold a plan is soberly discussed shows the danger of a too radical eruption under the high pressure generated by the existing abnormal system.

In this connection it may be noted that, vast as are the hereditary powers of the Connecticut towns in legislation and jealously as those powers have been guarded, they exist only by the assent and agreement of the towns collectively. In other words, a single town has legally no reserved rights and is the creature of legislation. This principle has been emphatically asserted by the supreme court of the state, in Webster *vs.* Town of Harwinton (32 Conn. Reports, 131) and in other cases there cited.

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which are constantly draining the brain and muscle of the country districts, the pressure on town rule is already severe and some qualification of it is inevitable.

On the plea of broad political expediency the final argument for the change must rest. For better or worse, the American theory of republican self-government is fixed in the postulate that large aggregations of people with the credentials of wealth and intelligence should not remain unrepresented in legislative councils. When an inherited system impairs seriously equal representative privileges, and, particularly, when it is perpetuated by party interest, the ultimate change is not more sure than are the partisan bitterness, the rancor and passions generated while the strife for the change is in progress. No reasoning from antiquity or anything else will ever convert the popular belief in this country to the notion that it is "fair" that New Haven, with 83,694 residents and 17,827 voters, should have the same numerical power in legislation as a town of 555 inhabitants and 118 voters — any more than it would be possible to enforce the dictum that New York city ought to have but two members in the Assembly of the Empire state and a single state senator. Foresighted statecraft, recognizing the evil when a majority of a people chafe under a blistering sense of wrong, and descrying also the danger of extreme and retaliatory enactments when the party of change finally triumphs, offers timely concessions, abates or removes the grievance and accepts reform by zephyr rather than by cyclone.

CLARENCE DEMING.

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FARM MORTGAGES AND THE SMALL FARMER.

CERTAIN economic alarmists have raised of late the cry: "The independent small farmer in the United States is in danger of extinction." If this be true, it needs no lengthy argument to show how grave a peril confronts us: the disappearance of the small farmer would obviously entail wide-reaching disturbances and radical changes in our whole economic and political civilization. But what is the basis on which this alarming assertion rests? It is the alleged "dangerous increase of farm mortgages." So great is the burden of indebtedness, we are told, that the West, sometimes described as "the land of corn and wine," might better be termed "the land of mortgages." The mortgages, it is claimed, are not being lifted; the land is consequently passing into the ownership of "capitalists," and the independent tillers of small farms will inevitably be replaced by a class of tenant farmers. These warnings and prophecies have been extended to include states as far east as Michigan and Indiana, and, in some cases, the Atlantic sea-board even. The falling value of land in the oldest settled states is assumed to forebode the disappearance of the small farmer in those states also.

While it is undoubtedly true that the volume of land mortgages, especially in the West, is constantly swelling, it is also true that there are very meagre resources of statistical and other data on which to ground a judgment that the increase indicates a disheartening outlook for the small farmer. In the absence of reliable statistics mere rumor has been drawn upon in order to spread the alarm.

To show the importance of drawing data from trustworthy sources, two citations may be made. During the late presidential campaign it was claimed that the mortgage indebtedness of Illinois was $620,000,000. The bureau of labor statistics for that state has issued a report which shows that the mortgages

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on farm lands (Cook county not included) aggregate only $123,733,098, nearly twenty millions of which are for deferred payments. The second citation is furnished by the *Baltimore Sun* of February 1, 1889. In an editorial of that issue reference is made to the embarrassed circumstances of the farmers of Bucks county, Pennsylvania, one of the richest and most prosperous counties of the state. According to the *Sun*, land there has fallen one-half, in some parts of the county more than one-half; the farmers generally are living beyond their means, and matters have reached that point where they are driven to hold meetings to discuss measures of relief. The testimony of the county recorder, however, is not corroborative of this state of affairs. He says:

> The farmers of the county have held no meetings to discuss the difficulties to which you allude. In two or three sections of the county they have held several meetings as to the advisability of extending certain railroads and devising plans of raising the necessary funds. The renters of farms seem somewhat to be hunting other pursuits this coming spring, but the owners of small farms do not seem to be disappearing or their lands falling into the hands of large property holders.[1]

A list of mortgages furnished by the recorder contains the number entered of record each year during the last twenty years. The lowest number recorded (544) was in 1871, the highest (710) was in 1877.

Up to 1879, no state west of Ohio had an organized bureau of labor statistics; and of those now existing only the Illinois and the Nebraska bureaus have made any compilations which throw much light on the economic situation of farmers as a class or of small farmers in particular. Tables giving merely the amount of mortgage indebtedness[2] are of little value; for, as Mr. Frank D. Jackson, secretary of state for Iowa, says:

> The record kept by the county recorders always shows the original amount of indebtedness, although the note secured thereby [*i.e.* by the mortgage] may bear credits almost equal to its face value.

The commissioner of the Michigan bureau states[3] that there are

[1] Letter, dated March 11, 1889.
[2] As in the Michigan Report for 1888.
[3] Report, 1888, p. 390.

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no means of knowing to a certainty whether mortgages are being discharged faster than new ones are being recorded.

Mr. Henry M. McDonald, president of the Traders' bank, Pierre, Dakota, estimates that the volume of Western-mortgage business, confined chiefly to Kansas, Nebraska, Minnesota and Dakota, has reached the sum of $150,000,000 yearly. It may exceed his figures. That it is of great magnitude is evident from the fact that in all Eastern cities (and in most of the towns and villages) are located numbers of agents who make a living from the commissions paid them for securing loans. Boston numbers more than fifty agencies of farm-mortgage companies. It is computed that Philadelphia alone negotiates yearly more than $15,000,000 of Western loans. Kansas and Nebraska have 134 incorporated mortgage companies. The companies organized under the laws of other states but operating in these two states increase the number to at least 200. In this reckoning no account is taken of firms and individuals, although a large amount of money is directly invested by lenders of this class.

It is hardly worth while to pause to consider whether a business of such vastness is increasing; it is safe to assume that statistics, if yearly compiled, would show a steady growth. It remains to be considered whether the present magnitude or prospective increase of this business threatens to work injury to the industrial interests of borrowers. On this point a pretty correct judgment may be drawn from the story of the rise and growth of Western farm mortgages — a story which is soon told.

In every new section the balance of trade for a few years is always unfavorable. A man does not go West for free land because he has plenty of money to spend, but because he lacks money. Settlers locating on unimproved land, more or less remote from towns or railroads, find that everything they have to buy costs a great deal, and what little they have to sell (if indeed they have anything to sell) brings a very low price. For two or three years, as a rule, there is nothing of consequence coming in, unless the settlers find work for themselves and their teams. In the meantime they are subjected to constant ex-

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pense for building purposes, fencing, farming implements, *etc.*, and until they get something like proper returns from their farms, their outlay is much greater than their income. The balance being against them, they soon make away with what little money they have brought with them. Merchants have to sell on credit, and they too experience the same financial embarrassment. The borrowing of money from the East therefore becomes a necessity in order that any satisfactory progress may be made in the development of the country. From this point of view, it is evident that the placing of a mortgage on a farm is evidence of thrift rather than the contrary. Without mortgages, development would have to proceed at a slow pace, as at the beginning of the century, when emigrants began to cross the mountains into Kentucky and Ohio. The rapidity with which the country has been settled and improved marks the dividing line between the old and the new West. The old West (of which Indiana and Illinois are the centre, and Western Ohio, Southern Michigan, Southern Wisconsin, Eastern Iowa and parts of Missouri constitute the border) moved forward at a snail's pace, with but little help from railroads or Eastern capital. The new West, lying largely beyond the Mississippi and north of Chicago, is making greater progress in one year than the old West accomplished in ten. Take, for example, Dakota (or what is now the two Dakotas), with 75 per cent of the farms mortgaged for sums amounting to $50,000,000. In 1880 Dakota's wheat crop was 2,830,289 bushels; in 1885 it had reached 38,166,413; two years later it reported the astonishing yield of 62,553,449 bushels. These figures almost equal the combined product of Illinois and Indiana after fifty years of slow material development. Will any one say that Dakota's advance is the result solely of changed conditions, whereby settlers, instead of having to wait years for railroads to come to them, find railroads built in advance and ready for the people to move in and occupy the land? Has not Eastern money been a beneficial factor in this development, enabling the settlers to build houses and fencing, buy farm machinery and cattle, and push forward other improvements?

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The commissioner of labor for the state of Michigan estimates the mortgage indebtedness of that state at $129,229,553,[1] which is about $7,000,000 less than the capital invested in manufacturing. Only about one-half of this indebtedness ($64,392,580) is on farms; and the inference is that the other half has been incurred by tradesmen and manufacturers. The commissioner continues his report in these words:

> While the mortgage indebtedness operates as a mammoth sponge, constantly and unceasingly absorbing the labor of others, on the other hand the amount invested in manufacturing institutions is a benefit to the whole community, as it gives employment to 114,890 men, 8,245 women and 5,872 children, who annually receive in wages the sum of $44,213,739, which in turn is spent among the business men, thus building up prosperous villages and cities.

The commissioner should have stopped to inquire how much of the capital invested in manufacturing was borrowed and constituted a part of the $129,229,553 mortgage indebtedness. And his report suggests a further question: If borrowed money applied to manufacturing "is a benefit to the whole community," may it not be argued that the same is true of the $64,392,580 used by farmers in their occupation? Their indebtedness being nineteen per cent of the estimated assessed valuation of all the farms of the state, nineteen per cent of the entire farm products (about $100,000,000) must be credited to mortgages. From this $19,000,000 must be deducted $4,636,265 interest paid to mortgagees. This interest answers to the profits retained by manufacturers. The remainder, $14,363,735, is the farmers' spending money, they being their own employers.

But we may go further and say that, as many manufacturers would not have been able to start in business had it not been for the aid of borrowed capital, so, without the friendly aid of the mortgage, many farmers would find the purchase and cultivation of farms beyond their reach. Instead, therefore, of crediting nineteen per cent of farm products in Michigan to mortgages, we should be nearer the truth in crediting fifty per cent, since nearly fifty per cent of the farms are under mort-

[1] Report, 1888, p. 391.

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gage. This gives the handsome figure of $50,000,000 of farm products directly attributable to the presence of mortgages. Subtracting the interest, we have left $45,363,735 for distribution among farmers.

The commissioner's assertion regarding mortgage indebtedness on farms, that these mortgages operate "as a mammoth sponge, constantly and unceasingly absorbing the labor of others," is an assertion which is frequently made concerning manufacturing institutions; and what he claims for manufacturing institutions may in general be claimed for farm mortgages — that they are "a benefit to the whole community," since, in the state of Michigan, they give employment, counting only two laborers to a farm, to 180,000 men (women and children generally being required to attend only to household duties), who annually receive in wages the $45,363,735 above mentioned, "which in turn is spent among the business men, thus building up prosperous villages and cities."

A problem for the curious is to calculate what portion of Dakota's 62,553,449 bushels wheat yield in 1887 was dependent for its production on the presence of her $50,000,000 mortgage indebtedness.

To return to the story of the rise and progress of Western mortgages: A short period was sufficient to test the Western loan business, the result proving that money placed on farms was both beneficial to the borrower and a perfectly safe investment to the lender. Then the demand in the East for Western farm mortgages began rapidly to increase. Thousands started up little offices through which to obtain money to place on farms. For years, say up to 1885, the success of the mortgage-loan business was marvellous. Seldom did the lender lose a dollar. The reason was plain: Land increased in value regularly every year, and loans, although they may have been excessive at the time they were made, were given a safe margin by the increase in the value of the security. This led the people of the East to demand more and more of these mortgages. They wanted more than were to be had. Solicitors were sent out by many companies, and large commissions were paid on

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)ans secured. The result was that farmers were induced to orrow more money than they ought ever to have had. All orts of pretexts were held out to induce them to borrow; and ney borrowed because it was made easy for them. Irresponsi-le loan agents sprang up by hundreds. Eastern people began) consider any security that had a Western name on it a ood investment. At length, in 1886, there came a pretty eneral failure of crops. In 1887 there was almost another ailure (some sections of course being excepted), and the result ast year was much the same. As a consequence, the irrespon-ible agents are seeking other business; and many Eastern eople are acquiring Western real estate, and are likely to do so or some time to come.

The conclusion to be drawn from this sketch of the rise and rogress of Western loans is that, while they have elements of trength, they have also elements of weakness. Among the lements of strength must be placed: First, the certainty that a series of years the lands pledged as security will advance price. Secondly, the character of the people who seek the Vest to make homes for themselves. Usually they are young nd energetic men and women; if foreigners, they are frugal nd willing to endure privation in order to lay up money. A hird element of strength is the larger margin of profits which, wing to a fresh and exceedingly fertile soil, the Western farmer as over his competitor of the East.

Passing to the elements of weakness in Western mortgages, 're may note the growing feeling of contempt with which the armer's calling is regarded. Though the energetic character f the people who are settling the West has been mentioned as n element of strength, it is well to note that this very energy ontains within itself a concealed risk. The Western farmer's nergy and ambition may at any time master his better judg-ient and beget dissatisfaction with farming because, followed a the old-fashioned method, it is too slow a way of making oney. The energetic man, having caught the spirit of an ge eager for quickly acquired fortunes, is allured into planning ow he may push farming vigorously and in six or eight years

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retire with a competence. Knowing that there are loan companies without number ready to accept his land as first-class security, he listens to the smooth words of a soliciting agent and gives a mortgage. With the money he buys stock or speculates in other farming land or in town lots. His hope of gain centres no longer in the yield his fields may bring him, but in the outside ventures he has made. He began by borrowing from choice; he ends perhaps by borrowing from necessity.

The chief element of weakness in Western mortgages (irresponsible loan companies and risk of crop-failure being passed over) is overloaning. This danger has been brought about and intensified by the abundance of Eastern money seeking the Western market. Owing to competition, security has readily been accepted, which, had money been scarce, would have been rejected as insufficient. Many companies risk the full value of the land mortgaged. A visit to almost any county seat in the border settlements will disclose even more surprising facts: it will be found, *e.g.*, that a certain mortgage company has loaned a farmer $1,500 on land which he had been offering at $1,200 but a short time previously.

The consequence of such overloaning is evident. The farmer who has been able to borrow nearly or quite the full amount of money for which he would sell his farm, is tempted, if his crops fail or if he be otherwise unsuccessful, to say: "Here, take my land." Many who are of a roaming or speculative tendency seek this opportunity to make a change. Overloaning therefore, if unchecked, will work disastrous results in throwing a good deal of land on the market at a low price. Reaction will set in, and the money which is now so freely offered for Western loans will seek other channels of investment. The supply becoming insufficient for the demand, rates of interest will once more rule high even where the widest margin of security can be furnished. Thus will a general check be put on the progress of improvement throughout the section which overloaning has affected.

Responsible loan companies have become alarmed and more conservative methods are reacting against the impending evil,

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in the hope that it may be averted and that these mortgages may continue to hold their high rank as securities on the one hand and on the other their place as a beneficial factor in the development of the resources of the country.

In so far, therefore, as it concerns the new West, the growth of farm mortgages to their present immense volume, instead of indicating lack of prosperity, is rather to be taken as a proof of prosperity. It is true that many farmers now borrow from necessity, owing to crop-failure or mismanagement, who formerly borrowed from choice. Many have been induced to borrow unwisely; perhaps from the consideration that when there were such great facilities for decorating their farms with mortgages, it was showing lack of enterprise to let so much good security go to waste.

Whether the number who have become embarrassed is composed chiefly of small farmers, statistics give no light beyond that contained in the Nebraska report for 1887–88. On page 380 are tabulated the reports of 215 farmers living in all sections of the state. Each farmer gives the number of acres in his farm; states whether he is owner or renter; whether his farm is mortgaged; whether he saved or ran in debt during the preceding year; also whether he saved in previous years. An analysis of these reports shows that, of the 215 farms, 113 are mortgaged; of the 78 owners of farms who saved last year, 41 (more than half) were carrying mortgages. The losses, classed according to size of farms, show the highest percentage of losers among owners of farms of 320 acres and over; the lowest percentage among owners of farms of between 80 and 160 acres. The figures run as follows:

Size of farms.	Number of farms.	Percentage losing money.
Under 80 acres	5	40.
80 acres	17	41.2
Over 80 and under 160 acres	15	13.3
160 acres	76	37.
Over 160 and under 320 acres	27	40.7
320 acres	13	53.9
Over 320 and under 640 acres	10	50.
640 acres and over	7	55.

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The above showing indicates that, if the new West has to pass through a period of general depression, the large landholder will be the chief sufferer. If landlordism, as a system, is to gain a footing in the United States, it will be secured first in the West, where there are the best opportunities offered for buying extensive tracts of land. Further east the tendency is towards smaller farms. In the West, also, the testimony of those acquainted with the real-estate market is that large bodies of land are seldom bought for other than speculative purposes the aim being to sell in small tracts as soon as the coming of immigrant farmers creates a demand for land to be cultivated.

But it is in the old West chiefly that the alarmist thinks he has discovered conditions that give warning that the small farmer is in danger of extinction. As has been remarked Indiana and Illinois lie in the centre of this territory and constitute the greater part of its area.

The increase of mortgages in Indiana, Illinois and adjacent territory being admitted, does this increase justify the apprehension that the farmers of this region are threatened with dangers greater or of a different character from those which may have to be encountered by the farmers of the new West?

Whatever may be the unwise risks taken by the farmers of the new West, those of the old West are, with rare exceptions proof against such temptations. They are eminently conservative and close calculators. Borrowing on mortgage is resorted to only when there is undoubted evidence that the percentage they can make on the added capital will be sufficiently above the interest they pay to ensure them a safe profit and in a few years enable them to lift their mortgages.

But the alarmist here steps forward with the assertion that the great increase of mortgages, instead of proving that borrowed money yields a good profit to the borrower, in reality shows that the mortgages are not being lifted.

Sometimes statistics are of great value, sometimes of none whatever. Their worth in indicating the industrial condition of farmers can be determined only by an appeal to the facts that lie behind and explain the statistics.

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I shall take a community of seven farmers in one of the best sections of Indiana.[1] Were there space, I should like to run over the history of these farmers for the eight years 1872–80, during which period it is claimed that statistics show an annual increase of $12,000,000 mortgage indebtedness in Indiana. The record of three visits must suffice. The first, in 1872, furnishes the following entry:

J. H. — Farm of 80 acres; five sons; no indebtedness.
R. W. — Farm of 215 acres; no sons; no indebtedness; loans, $3,000.
H. D. — Farm of 160 acres; two sons; no indebtedness.

B. T. — Farm of 80 acres; one son; mortgage of	$2,500
W. T. — Farm of 240 acres; four sons; mortgage of . . .	10,000
J. A. — Farm of 125 acres; two sons; mortgage of . . .	500
W. G. — Farm of 80 acres; two sons; mortgage of	250
Total mortgage indebtedness (1872),	$13,250

Entry made on second visit, 1876:

J. H. — Circumstances unchanged; three of his sons, now of age, are renters on other farms.
R. W. — Loans increased to $5,000; has rented farm to a son of W. T., and has moved to town.
H. D. — Loans, $500.
B. T. — Mortgage lifted.

W. T. — Mortgage reduced to	$4,000
J. A. — Farm sold to H. G., who has three sons; mortgage of	2,000
W. G. — Circumstances unchanged; mortgage of	250
Total mortgage indebtedness (1876),	$6,250

Third visit, 1880:

J. H. — Intemperate; mortgage of	$500
R. W. — Has sold farm to a son of W. T., and holds mortgage for	8,000
H. D. — Has sold farm, and moved to town; holds mortgage for	5,000

[1] I turn away from that part of the state where it is asserted that "the small farmer who tills with his own hands his farm of 80 or 160 acres, cannot, after paying his taxes and repairing his buildings, give himself a salary of $400 per year from which to furnish food and clothing." (Complaint of the Poor, *The Independent*, July 26, 1888.) All industrious farmers, settled on land so poor as that, would do well to surrender their title to the government. Teaming at $2.00 per day would pay better.

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B. T. — Has sold farm to one of J. A.'s sons; holds mortgage for	$3,00
W. T. — Has sold farm; holds mortgage for	7,25
H. G. — Has reduced mortgage to	1,50
W. G. — Shiftless; mortgage of	35
Total mortgage indebtedness (1880),	$25,60

According to this exhibit, the mortgage indebtedness upon these farms has increased, during the last four years, nearly $20,000, and the amount is nearly double that of 1872. But will any one deny, after examining the facts set forth above that these farmers, with but two exceptions, have been prosperous?

A consideration too important to be overlooked, is that farmers' families, like other families, are composed of sons as well as daughters. Farmers seldom speculate and seldom make money with sufficient rapidity and in sufficient amount to be able to start these sons in life without their incurring some indebtedness. And indeed, where a farmer has abundant means and perhaps only one son, he is more inclined to keep possession of his property and let his son fight his way up, as he himself had done. Were there, therefore, no other explanation of the increase of mortgages, it could be found in the increase of farmers' sons, who, ambitious to acquire farms of their own, seek the first opportunity to purchase. They do this even though it involves a mortgage which they know will not be lifted perhaps for five or more years.

But let us see whether there are not other causes for the increase of mortgages in the old West — causes equally compatible with conditions of true prosperity. During the twenty-five years in which the new West has been moving forward so rapidly, Indiana[1] has likewise been experiencing a development sufficiently marvellous to attract general notice, were it not that public interest has been drawn more towards the border or

[1] The writer has made personal observation of the material progress of Indiana during the last twenty-five years, and if that of Southern Michigan be similar (as there is reason to believe it is), there need be no alarm over the mortgage statistics of either state.

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ivilization.[1] Without pausing to refer to railroads, the factors n Indiana's development to which it is desired to draw special ttention are tile drainage and the building of gravel roads.

It is a generally conceded fact that a country's roads are the ieasure of its civilization viewed from the material side. The ravel-road laws of Indiana are in the main copied from those f Ohio.[2] When the majority necessary to secure a road has een obtained, the tax to build is levied alike on those who voted gainst the measure and those who voted for it. The farmer lready burdened with a heavy mortgage is mercilessly left to ull through as best he can. From fifteen hundred to two housand dollars per mile is the cost of construction. There re no statistics to show the amount that the farmers of Indiana nnually put into gravel-road improvement, but it undoubtedly s a very large sum. It is of sufficient importance to be itemized n tax receipts. A transcript from the semi-annual tax receipts or a farm of one hundred acres gives the following entries:

1888.

State and county tax	$18.60
Credit by road tax	2.15
	$16.45
Gravel roads (tax on two)	25.60
	$42.05

1889.

State and county tax	$24.52
Credit by road tax	5.38
	$19.14
Gravel roads (tax on two)	25.60
	$44.74

[1] But in fact, though Kansas and Nebraska lie, on an average, seven hundred iles west of Indiana, in so far as development is concerned the three states may ell be placed side by side. Hence the same favorable conditions fostering the crease of mortgages in Kansas and Nebraska may be conceded for Indiana.

[2] Ohio is becoming well furnished with a system of free gravel roads, in places ilt on adjacent section lines, so that some sections are gravelled on every side. he tax on the farmers has been heavy, often running as high as $5.00 per acre.

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Probably two millions would be a low estimate for the tota annual tax raised throughout the state for the building of grave roads.

The history of tile drainage as a factor in the industrial prog ress of the West is yet to be written. The literature on th subject is very limited, and what little statistical matter ha been compiled is very unsatisfactory. The tiling of land begar in Indiana about twenty-five years ago. Previous to that dat "wooden ditches," lasting only a few years, were used. I tiling, as in gravel roads, Ohio had already led the way. Tilin met with bitter opposition in Indiana as elsewhere, because o the expense, although from the first it was conceded that lan once thoroughly tiled was "fixed" for ages to come. The advo cates of the innovation slowly gained ground. They showe their faith by borrowing money, where necessary, to buy tile In 1875, by which time a complete victory had been won, th manufacture of tile had assumed the proportions of a vast in dustry. The Indiana farmers were convinced that, if it paid t borrow money for anything, certainly it might well be don to push tiling. Wet land, which would yield only from ten t twenty-five bushels of corn per acre, was changed, as if b magic, into fruitful fields from which began to be gathered sixt and often seventy-five bushels. Land worth only thirty dollar jumped to sixty and eighty. To-day tile factories are runnin at full capacity, notwithstanding the millions that have bee invested in ditches. The owner of a tiled farm will smile at th mention of a mortgage of two or three thousand dollars. Th Indiana farmers have exemplified over and over again the wis dom of Johnson of the state of New York, who has won fo himself the honor of being the father of tile drainage in America He was a Scotchman who, back in "the forties," sent to hi native land for his first tiles. Though laughed at by his neigh bors, he persisted in his purpose, having sufficient faith i results to go to the bank and borrow the money necessary t pay the cost of his experiment. After his first crop on hi tiled land he was ridiculed no longer.

The Indiana bureau of statistics reports (1887–88) 3,415,46

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ods of tile ditching put down during 1887. At an average cost of not less than fifty cents per rod, the expenditure amounts to $1,707,730. This, added to the amount estimated for gravel roads, gives (on these two items only) nearly four millions yearly put into improvements by the farmers of Indiana. In Dakota, it costs about $4.00 to bring an acre of land under cultivation. Between 1880 and 1885 the annual increase of acreage averaged about one million acres, or an investment slightly in excess of that which Indiana has put into ditching and roads. The progress made in the development of Dakota's resources has been noised abroad; Indiana has been working quietly. Dakota has had the help of Eastern money; Indiana has accomplished nearly as much with money which has generally been obtained within her own borders. If Dakota has been enabled to move forward so rapidly while subjected to an annual interest drain of half a million, surely any increase there may be of mortgages in Indiana is no cause for alarm, especially considering that the bulk of interest money is kept at home.

Passing into Illinois, we find that the resources of this state, like those of Indiana, are in process of development, but are in a much less advanced stage. As to the gravel roads of Illinois, nothing is to be said, for the simple reason that she has none worth mentioning. As to tile drainage, Indiana was well advanced before Illinois awoke to a realization of its importance. In 1875, when Indiana had been tiling for more than ten years (an antecedent period of experiment being unreckoned) and had tile factories at almost all her cross-roads, Illinois had only twenty-four in the entire state. In 1880 the number had increased, but only to 166. The next four years (1880–84) were marked by a great awakening, and factories multiplied to 526.[1] Since 1884 no statistics have been collected, but the progress, though great, should have been much greater, considering that hardly a fair beginning has yet been made towards giving the state a thorough tiling. The best thing that could happen to the farmers of Illinois would be for them to experience a common impulse to swell their $123,000,000 mortgage indebtedness

[1] Report of State Bureau, 1884.

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by borrowing money to do ditching, as well as to build gravel roads where gravel is to be had. There would be no cause for serious apprehension if the interest rate went up to eight or even nine per cent. This would bring back to Chicago the loan agents who have gone to Indianapolis, or to points further west or northwest. If Indiana farmers have found it profitable to borrow money to build roads and put in ditches, surely those of Illinois, with a superior soil, can be running no risk.

The old West has little to fear from reckless methods of loaning; and if the new West can be saved from being thus brought into disrepute, the outlook is encouraging alike for both sections. The movement to help the distressed mortgagor by taxing mortgages is uncalled for as well as unwise. The burden of such a tax would fall ultimately on the borrower, this result being attained either through a rise in the rate of interest or through direct contract, the mortgagor binding himself to the mortgagee to pay the tax levied on the mortgage. Oregon passed a law taxing mortgages, but it was soon discovered that the lenders made the borrowers carry the burden.

The number of foreclosures rather than the number of mortgages furnishes the best basis on which to ground a judgment whether farmers are becoming embarrassed. But even foreclosures, within a moderate limit, work beneficially in so far as they weed out shiftless farmers. A mortgage foreclosure may be reckoned as equivalent to a failure in farming. The percentage of such failures is much less than that of the business world. Against the 43,079 mortgaged farms reported by the Michigan bureau (1888) there are only 1667 foreclosures. Of this number it is fair to infer that many were against parties who mortgaged their land and put the money into business ventures.

The Nebraska labor-bureau report (1887–88) contains a chapter (page 205) on the causes of the farmers' failures, based upon the answers obtained *from farmers* to inquiries addressed to them by the bureau. Among the evils repeatedly mentioned is the acquisition of more land than can be properly cultivated. That is to say, the opinion prevails among farmers themselves

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that the most favorable conditions of success are those of the small farmer, whose fields are of such a size that he can carefully till them.

A classified enumeration of the reports gives the following results:

88 reply: Too high rates of interest.[1] 76 reply: Too high rates of freight.[2] 55 reply: Carelessness about going into debt.[3] 51 reply: Buying too much machinery.[4] 50 reply: Low price of produce.[5] 49 reply: Poor crops.[6] 49 reply: Monopolies. 35 reply: Mismanagement. 32 reply: Living beyond income.[7] 28 reply: Too much loafing. 21 reply: No organization. 19 reply: High taxes. 19 reply: Do not take care of machinery. 18 reply: Loss of stock. 16 reply: Too much drinking. 12 reply: High price of fuel. 11 reply: High price of lumber.[8] 10 reply: Too many mortgages. 7 reply: Overproduction.

These farmers, speaking of their own business, certainly speak with knowledge; and they seem also to have spoken with candor. It will be noticed that "high rates of interest" heads the list. It is well to bear in mind that this is not farm-mortgage interest (which ranges from six to eight per cent), but interest drawn by short time loans obtained of banks or individuals. The amount of indebtedness which the farmers

[1] "Borrowing money on chattel security, and then paying two and three per cent a month." (Page 210.)

[2] "The government should take steps towards establishing a special rate on lumber and coal to Nebraska." (Page 207.)

[3] "Going in debt for a great many things that could be done without, and depending on the next crop to pay for them; then, if the crop fails, they have to borrow money at a high rate of interest, and once in debt it takes a long time to get out. Some never do without selling their farms." (Page 214.)

[4] "Paying a large interest on machinery bought on time, and then letting it stand in the field and rot." (Page 214.)

[5] "What we want is anything to lessen freight rates *and give us a better market.*" (Page 215.)

[6] "Drought is a serious cause of failure, causing short crops, necessitating the running in debt perhaps at the banks with interest at two per cent a month, which soon swamps the farmer." (Page 207.)

[7] "A majority of the farmers are poor when they begin their work, and have to borrow money at a high rate of interest in order to get a start in the manner they imagine they should begin." (Page 209.)

[8] "Lumber is one of the main wants in this country for the protection of our stock industry; and the price is so high that we cannot afford to purchase the amount necessary to shelter our stock." (Page 207.)

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throughout the West are thus carrying in addition to the land mortgages is very great. The drain of this indebtedness upon the resources of the people, at two and three per cent interest per month, is so heavy that, comparatively considered, it is a privilege and a blessing to pay the land-mortgage interest. That farmers attribute little of their misfortunes to the latter is evident from the small number (ten) who reply: "Too many mortgages."

Whatever may be the ground for ominous predictions in regard to the future of the workingman in trades and manufactures, the outlook for the small farmer is most encouraging. His day is rapidly approaching. He can now easily cultivate twice as much land as he could twenty-five years ago. Being his own employer, he reaps the benefit of every improvement made in implements and machinery. He does not, like many factory wage-workers, regard the mechanical progress of the age as detrimental to his interests. He has no fears such as haunt those who apprehend being made slaves to vast manufacturing corporations. Nor has he any fear that a monopoly of production will drive him from the field. Nature is his best friend. The shoe manufacturer may double his force and run extra hours summer and winter, thus throwing on the market double the usual stock. Nature in its rotation of seasons compels an entire suspension of agricultural operations every winter. She says: "One crop a year and then a long rest." Thus she co-operates in promoting the small farmer's interests. He knows that the capitalist farmer cannot, by doubling his working force or by spending any amount of money for improved machinery, so push his crops that he may have two in one season. When his day's work is accomplished, the small farmer can lie down and sleep contentedly, knowing that, if he has done his duty in cultivating his fields, the growth of his crops will keep pace with that of the richest landholder.

Probably the most encouraging outlook for the small farmer lies in the growing tendency to emphasize the importance of close farming. Those who study most carefully the progress of agriculture in the United States, tell us that one of its most

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alarming features is the steady degeneration of the soil. In New York the wheat crop went down in twenty years from thirteen bushels per acre to ten bushels. Sweeping around southward through the states as far as Texas and then northward, one meets with the same decline, though not always to a uniform extent. Ultimately soil deterioration will be to the small farmer's gain, for the day is coming when the conviction will generally prevail that close farming gives the best profits. President Smart of Perdue university says:

> Close farming will never be done under the landlord and tenant system. The best results will be secured by small owners who, with their sons and daughters, have an interest in the soil and a taste for the business.

Besides the advantage in prospect for the small farmer from the reaction against soil degeneracy, it is necessary to note also, if we would have a full survey of his economic environment, a manifest reaction against moral degeneracy. It will be sufficient to cite a piece of evidence which comes from Washington county, Georgia. During three years of license, the number of small farmers among the colored people stood each year 5,886, 6,001 and 6,046 respectively. One year ago the county voted "no license." The report just made is that the number of small farmers (colored) has been nearly doubled, going up at one bound to 11,690.

Evidently the enemy most dangerous to the prosperity of the small farmer, white or black, is not the mortgage.

W. F. MAPPIN.

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THE GUILFORD MILLER CASE AND THE RAILROAD INDEMNITY LANDS.

IN many of the land grants made by Congress to railroads — the grand aggregate of which amounts to about 155,000,000 acres — we find so-called "indemnity provisions." Some of the larger grants contain no such provisions, but the two largest of all and most of the minor grants contain them. These indemnity provisions designate, in addition to the land grant, so-called "indemnity belts," and allow the companies, if any of the granted lands prove unavailable under the terms of the grant, to select from the indemnity belt enough land to make good the deficiency. In many of the grants the indemnity belt is fifty per cent wider than the granted belt; in other words, for a thousand acres of grant there are fifteen hundred acres of indemnity lands.

As regards the conditions under which indemnity may be claimed, the later granting acts are much more liberal than the earlier ones. In the grants in aid of railroad construction to the states of Arkansas and Missouri in 1853, to Michigan in 1856, to Wisconsin in 1856, to Iowa in 1856 and to Minnesota in 1857, the only deficiencies for which indemnity was promised were those resulting from sales or the attachment of pre-emption rights to the granted lands. But the grant to Wisconsin in 1864 promised to make good losses of lands sold, reserved or otherwise disposed of; the grant to Iowa in 1864 promised indemnity for any granted lands sold, pre-empted and reserved for any purpose whatsoever; the grant to Minnesota in 1864 promised indemnity for granted lands sold, appropriated, reserved or otherwise disposed of, or to which pre-emption rights had attached.

The railroad companies were expected to build their roads with all possible expedition, to ascertain whether any of the granted lands were unavailable under the terms of the grant

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and then to make their selection from the indemnity belt; but, by the practice of the Land office, both classes of lands have been withdrawn from settlement and kept out of the reach of settlers ten, fifteen, thirty years, at the convenience of the railroad companies. The railroads were in no haste: the longer they could keep the indemnity lands closed to settlers, the more valuable they were when finally opened; the fee of the granted lands being in the United States, they were not subject to taxation until patented to the railroad companies, — who cared nothing about the patents so long as they had the grants, — and by reason of this exemption from taxation they were particularly desirable lands for settlers to purchase. Besides this, the railroads soon fell into the remunerative habit of selling the indemnity lands as though they were their own; and since, in 1874, the Supreme Court decided that a land grant could not expire of itself,[1] the railroad companies have felt perfectly secure

[1] Schulenburg *vs.* Harriman, 21 Wallace, 44. In this case the court circumscribed the obvious intent of Congress by the letter of the act. In the grant to the state of Wisconsin in aid of railroad construction, this language occurs: "If said roads are not completed within ten years no further sales shall be made and the land unsold shall revert to the United States." But the Supreme Court held, in this case of Schulenburg *vs.* Harriman, that this was empty and meaningless phraseology, because the act began with the words: "That there be and is hereby granted," *etc.*, by which words Congress divested the United States of title and the grant could not be made to revert of itself, no matter what Congress intended. I speak with some confidence of what Congress intended, because Congress has acted on the assumption that a grant can revert of itself. The act of Feb. 9, 1853, granted certain lands to the states of Missouri and Arkansas in aid of the construction of railroads; and in the act these words occur: "And if said road is not completed within ten years, no further sales shall be made, and the land unsold shall revert to the United States." In 1866 the ten years had more than elapsed without the construction of the railroad, and Congress had not the least idea in the world that the provision for a reversion was beyond its power and therefore null and void, for the act of July 28, 1866, begins thus: "That the act . . . approved Feb. 9, 1853, with all the provisions therein made, be and the same is hereby revived and extended for the term of ten years from the passage of this act; and all the lands therein granted, which reverted to the United States under the provisions of said act be and the same are hereby restored to the same custody, control and condition and made subject to the uses and trusts in all respects as they were before and at the time such reversion took effect." But eight years later, in the Schulenburg case, the Supreme Court decided that under these conditions no reversion took effect; the land could be reclaimed only by farther judicial or legislative proceedings; and, as it is infinitely easier for a delinquent land-grant railway company to prevent the passage of a forfeiture bill than it is for any voluntary champions of the public interest to get a forfeiture bill through both branches of one Congress, the

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in possession of their lands, because they had only to prevent the passage of a forfeiture act by Congress. It was the facility with which the corporate beneficiaries of the government obtained everything they wanted through the Land office, and the uniformity with which all doubts were resolved against the public interest, that inspired the late Hon. E. B. Washburne, for eighteen years a member of the House of Representatives, to say in a letter to *The Chicago Tribune* in 1886:

> The General Land office for the past fifteen or twenty years has, according to my judgment, been the most corrupt department that ever existed in any government on the face of the earth.

Commissioner Sparks, whose efforts Mr. Washburne commended in this letter, might have accomplished a very great reform had he proceeded as *suaviter in modo* as *fortiter in re*. Unfortunately for the public good, he was needlessly pugnacious; aroused hostility to himself personally as well as to his policy; undertook too much in the way of unsettling settled questions, and finally went out of office in consequence of a quarrel with Secretary Lamar. The testimony that public lands were being taken up in violation of and by evasions of the law all through the public-land territories had been collected by the Republican special agents of Mr. Sparks' Republican predecessor. Mr. Sparks found this evidence lying on his desk side by side with the patents that were brought to him for signature. On the 3d of April, 1885, he issued an order that no more cases were to be passed to patent until he had, through a board, given the papers some examination. Now who was injured by that order? The settler under the homestead and pre-emption laws was just as secure for another five years as he had been during the past five years; in many cases he had left his patent uncalled for ten or fifteen years; along all the land-grant roads were thousands of settlers on railroad lands who had no patents and who wanted none, because they were per-

decision in Schulenburg *vs.* Harriman has been of incalculable value to the railroad companies. With scarcely an exception all the land grants would have lapsed by their own provisions but for this decision.

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fectly secure under their contracts with the railroad companies and because, when the lands were patented, they would be taxable. The *bona-fide* settler needed no patent until he had occasion to sell. The settlers who wanted to sell immediately after perfecting their titles did undoubtedly suffer some inconvenience; but these were a very small class, and the inconvenience was much smaller than has been represented, because, if the settler could show by the records of the local land office that he had in good faith complied with the land laws, every purchaser or money-lender knew that his title was perfect even if it was not written out in the form of a patent, and there was little trouble about making a loan or a sale. But there were persons who were greatly injured by this order. They were speculators who were taking up public lands under a form of law, but under so thin a form that they knew the transaction would not bear investigation; they knew they would get no patents if their cases were examined. The local bankers who had lent these pretended settlers money knew that they would lose all the security for their advances if the entries of their debtors were to be investigated. These local bankers and speculators had influence with the politicians. They worked up a tremendous opposition to the order of April 3. They made it appear that Mr. Sparks was unsettling all real-estate titles in the territories. They asserted that he was ruining the chief industry of the territories; which was measurably true if the business of entering land for the sole purpose of selling relinquishments and the appropriation of land through evasions of the pre-emption and homestead and timber-culture laws, for purposes of sale instead of residence, were the chief industries of the territories. Members of Congress who were interested in banks that lent money to violators of the land laws denounced Mr. Sparks in the House of Representatives as the enemy of the honest settler, the relentless foe of the pioneer. Territorial newspapers howled with rage at the check Mr. Sparks had administered to the real-estate and banking booms of the prospective states. Secretary Lamar yielded to the pressure, and, in the fall of 1885, rescinded the order of April 3.

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It was just prior to this conflict, *viz.* in November, 1884, that a most important case touching the indemnity lands came before the Land office. This was the case of Guilford Miller. When this case came up, 2,000 cases of a similar character awaited decision; and when the final decision was rendered, it affected 17,836,000 acres of indemnity lands.[1]

I.

The national career of Guilford Miller was very nearly coincident with that of President Cleveland. It was three months after Mr. Cleveland's inauguration that Commissioner Sparks decided that Miller was entitled to his land, and it was during the campaign for Mr. Cleveland's re-election that Secretary Vilas affirmed this decision on the appeal of the railroad company.

There were certain features of the Guilford Miller case that were peculiar to it, and certain other features which it had in common with a small number of other cases. We need not spend any time in the consideration of these points, nor need we take into account (what appears to be a fact) that Miller was at the same time trying to get one quarter-section of land under the homestead law and another under the pre-emption law; that, in other words, he was swearing to two separate and simultaneous places of residence and, unless he was a very remarkable person, was not entitled to either quarter-section. The term perjurer is perhaps too severe to apply to a man who is merely acting under the influence of that public sentiment, dominant in the territories, that recognizes the right of every person to get 480 acres of public land by compliance with simply the external forms of the homestead, the pre-emption and the timber-culture laws.

Guilford Miller's farm was within the indemnity limits of the Northern Pacific railroad. He made his location after the Interior department had withdrawn the indemnity lands from settlement, but before the railroad company had selected the tract he

[1] Report of the Commissioner of the General Land office, 1888, p. 40.

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was on. If the withdrawal were legal, Miller had no right to go on the land; but if it were illegal, he had as much right there as he had on any part of the public domain. Miller's case reached the General Land office in November, 1884; and in June, 1885, the commissioner decided that there was no authority for the withdrawal of the indemnity lands from settlement, and that, as Miller had taken up his quarter-section before the railroad claimed it as indemnity, he had a right to retain it. From this decision, of course, appeal was taken to the secretary of the Interior, Mr. Lamar. The matter was referred to the assistant attorney-general for the department; and while the opinion rendered by that official (Mr. Montgomery) has never been published, it is understood that he advised that the decision of the commissioner be affirmed. This conclusion did not commend itself to Secretary Lamar, and he referred the question to the attorney-general. It was not until March, 1887, that the attorney-general responded. He affirmed the right of the railroad company to the land, on the ground that the withdrawal of the indemnity lands from settlement was within the discretion of the secretary of the Interior. Secretary Lamar took no action on the receipt of this opinion, but unofficially, and to representatives of the press, he expressed his concurrence with the attorney-general and his intention of deciding the Miller case accordingly.

In the latter part of April, the secretary went to Charleston to deliver an address at the unveiling of the monument to John C. Calhoun. While he was absent on this mission, the newspapers published a letter addressed by the President to the secretary of the Interior, dated after the secretary's departure, requesting, or commanding, the secretary so to decide the Miller case that indemnity lands should no longer be closed to settlers, and implying grave doubt of the legality of the original withdrawals. In this letter the President said:

> With this interpretation of the law [Attorney-General Garland's] and the former orders and action of the Interior department, it will be seen that their effect has been the withdrawal and reservation since 1872 of thousands if not millions of acres of these lands from the operation of

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the land laws of the United States, thus placing them beyond the reach of our citizens desiring under such laws to settle and make homes upon the same, and that this has been done for the benefit of a railroad company having no fixed, certain or definite interests in such lands. In this manner the beneficent policy and intention of the government in relation to the public domain have for all these years to that extent been thwarted. There seems to be no evidence presented showing how much, if any, of this vast tract is necessary for the fulfilment of the grant to the railroad company, nor does there appear to be any limitation of the time within which this fact should be made known and the corporation obliged to make its selection. After a lapse of seventeen years this large body of the public domain is still held in reserve to the exclusion of settlers, for the convenience of a corporate beneficiary of the government and awaiting its selection, though it is entirely certain that much of this reserved land can never be honestly claimed by said corporation. Such a condition of the public lands should no longer continue. So far as it is the result of executive rules and methods these should be abandoned, and so far as it is a consequence of improvident laws these should be repealed or amended. . . . I suggest that you exercise the power and authority you have in the premises upon equitable considerations, with every presumption and intendment in favor of the settler, and in case you find this corporation is entitled to select any more of these lands than it has already acquired, that you direct it to select in lieu of the land upon which Mr. Miller has settled other land within the limits of the indemnity reservation, upon which neither he nor any other citizen has in good faith settled or made improvements.

So far as the face of the transaction went, the President had administered to his secretary of the Interior the most marked slight that a cabinet officer could have received. Why could not the President have given his opinions to Mr. Lamar in the privacy of the cabinet meeting? Why should he rush into print with instructions to the secretary of the Interior for the decision of a case then pending before that officer, and on which he had already procured the advice of his colleague the attorney-general? More than this; it is customary when correspondence is made public to make sure that the letters reach the persons addressed before they reach the public, but this letter was dated on a day when the whole nation knew that the secretary was in Charleston. The letter was not made public at the Interior department, but at the White House. Absolutely no detail

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was omitted that could make this action of the President the most studied insult to the secretary. The latter's resignation was looked for. It was not offered; an astonished country found out that the President and secretary were on the best of terms; that the secretary did not mind a little thing like this in the least; and, finally, that this was a piece of stage play; that the President and secretary had arranged this letter, and the time and manner of its publication, before the secretary left the city. But it has never been explained why the secretary, now an associate justice of the Supreme Court, should consent to so marked an affront merely that the President should have, what justly belonged to him, the credit of intervening in behalf of the settlers on indemnity lands.

Mr. Vilas became secretary of the Interior in January, 1888, and in August he decided the Guilford Miller case[1] on the appeal regarding which his predecessor had secured the advice of the attorney-general seventeen months before. Contrary to the advice of the attorney-general, Secretary Vilas decided that his predecessors had no authority to withdraw the indemnity lands from settlement, and that Miller was therefore entitled to his farm.

As a net result of all this, Guilford Miller has his farm, and the doctrine that there is authority for the withdrawal of the indemnity lands from settlement has been denied by the secretary of the Interior.

This decision of the secretary seems to be supported by certain dicta of the Supreme Court. In 1883, in the case of Cedar Rapids *etc.* railroad against Herring,[2] the judges appeared to be all at sea as to the power of withdrawal. Justice Miller, who delivered the opinion of the court, said:

> What right the company acquired previous to selection as against the defendant, a homesteader, is a question which presents no little embarrassment, and upon which there is not, perhaps, entire harmony in the adjudication. As to this we are not at present entirely agreed.

Justice Miller, however, proceeds to draw a very sharp line of

[1] 7 Land Decisions, 100. [2] 110 U. S. 27.

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demarcation between the company's rights within the granted limits and its rights within the indemnity limits. He says:

It is obvious, however, that the right to these odd sections and the right to others in lieu of such odd sections as have been previously disposed of, depend on very different circumstances.

He quotes from the opinion in the case of the Oregon and California railroad:

With respect to the "lieu lands," as they are called, the right was only a float, and attached to no specified tracts until the selection was actually made in the manner prescribed. . . . It was within the secondary or indemnity territory where that deficiency was to be supplied. The railroad company had not and could not have any claim to it until specially selected, as it was for that purpose. (Ryan *vs.* Railroad Company, 99 U. S. 382.)

He then resumes:

We are of opinion that no right of selection in any of these lands accrues until the entire line of the road to be built has been established by the company and filed in the General Land office at Washington, and that until then no duty devolves upon the secretary to withdraw or withhold the land from sale or pre-emption. . . . It was during this delay of three years and a half that the entries were made under which defendants hold the land and acquired the legal title, except in a single instance, made January 4, 1868, before any action of the secretary could be had to withdraw the lands, and it was not until March 16, 1876, that any of the lands in controversy were selected by the company; an average of ten years after the rights of the defendants had vested. We are of the opinion that the defendants had a right to do this in regard to any but the odd sections within the six-mile limit; that there was no contract between the United States and the plaintiff which forbade it. No right existed in plaintiff to all these lands, or to any specific sections of them during this period. No obligation of the government to withdraw them from sale arose until plaintiff filed a map definitely showing the entire line of its road, in the General Land office. . . . If the plaintiff has been injured it is by its own laches. If there is no land to satisfy its demands it is because it delayed over three years to file its map to establish the line of its road, and for years afterward to make selections. It is unreasonable to say that during all that time these valuable lands were to be kept out of the market when the country was rapidly filling up with an agricultural population, settling and making valuable farms on them.

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There is in this opinion an explicit statement that until the map of definite location was filed the indemnity lands were open to settlers; there is an implication that after the map of definite location was filed the indemnity lands were closed to settlement, or might legally be closed by the secretary; but here is an explicit statement that these defendants did what they had a right to do, and one of them made his entry five weeks after the map of definite location was filed, which, so far as it goes, is a denial of the right of the secretary to close the indemnity lands to settlement until they were actually selected by the railroad company. The next case, however, makes this matter a little more definite. In 1884 Justice Miller read the opinion of the court in the case of the St. Paul and Sioux City railroad company against the Winona and St. Peter railroad company.[1] He said:

> The plaintiff in error insists that the map of its line of road was filed in 1859. The court of original jurisdiction finds that up to the time of the trial, October, 1878, a period of nearly twenty years, no selection of these lands had ever been made by that company or any one for it. Was there a vested right in this company during all this time to have not only these lands [the granted sections] but all the other odd sections within the twenty mile limits on each side of the line of the road [the indemnity lands] await its pleasure? Had the settlers in that populous region no right to buy of the government because the company might choose to take them, or might after all this delay find out that they were necessary to make up deficiencies in other quarters? How long were such lands to be withheld from market, and withdrawn from taxation and forbidden to cultivation?

There is an obvious implication here that even after the map of definite location was filed indemnity lands were open to entry until selected by the company.

II.

The amount of withdrawn lands that will be opened to settlers as a result of the Miller case is greatly reduced (1) by an opinion of the attorney-general (rendered January 17 and made

[1] 112 U. S. 720.

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public November 24, 1888, and accepted by Secretary Vilas) that the Northern Pacific railroad has two indemnity belts, and that it may take indemnity lands in Dakota to make good losses in Montana; (2) by the decision of Secretary Lamar in the Omaha case, that the railroads may take indemnity lands for any sort of losses; and (3) by the attorney-general's construction of the readjustment law of March 3, 1887, concerning sales of indemnity lands by the railroads.

(1) One of the results of the President's letter of April, 1887, to Secretary Lamar (cited above) was that, within a few weeks the secretary issued a rule on the land-grant railroad companies to show cause why the indemnity lands which they had not yet taken up should not be thrown open to settlement. Arguments were heard, the decision was against the railroad companies, and in August the secretary issued his orders restoring to the public domain several million acres of land that had been closed to settlers for periods varying from ten to thirty years without having been acquired by the railroad companies. The secretary at once opened to settlement the indemnity lands that had not been selected by the railroad companies. Indemnity lands selected by the companies but not certified by the department were thrown open conditionally: settlers might make entry of these lands with due notice that the railroad claimed them and would get them if able to show that it needed them to make good losses within the granted limits. Two of these decisions were prepared by the secretary with great care; one was in the case of the Atlantic and Pacific and the other in the case of the Northern Pacific railroad. Both were prepared for promulgation August 15, but the Northern Pacific decision was withheld; it was promulgated one month later, but at that time the secretary was out of town and the decision bears the signature of Assistant Secretary Muldrow. Whether by accident or because this decision was not expected to stand I do not know — but the decision was suppressed so far as official publication goes. Volume VI of *Land Decisions* contains the Atlantic and Pacific, but not the Northern Pacific opinion.

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There are several points of very decided interest in this opinion. In April the secretary was convinced of the validity of the withdrawals, and in a general way agreed with the contention of the railroad as against that of the settlers. But so convincing was the President's letter that, in August, in the decision on the Northern Pacific indemnity-land question, he held that the original withdrawal was without authority, unfair to the public interests, and probably a direct violation of the terms of the granting act. He did not stop here in circumscribing the claims of a great corporation. He would leave Shylock nothing but his bare pound of flesh. The original indemnity belt was ten miles wide. The resolution of May 31, 1870, provided for an indemnity belt ten miles wide. From the passage of that resolution down to August, 1887, no one had ever doubted that the Northern Pacific had two indemnity belts, each ten miles wide. This was the construction of the Land office and the Interior department for seventeen years; it was the official decision of Mr. Lamar's immediate predecessor, Mr. Teller, who was asked by the company in 1883 to withdraw the second indemnity belt, and who, while recognizing the company's right to select lieu lands within twenty miles of its grant, refused to withdraw the second indemnity belt on the ground that it was not needed to make good the company's grant. Mr. Teller also intimated that the public interest would not permit the indefinite withdrawal of the original belt. But Secretary Lamar, with that disregard for precedents and *res adjudicata* for which he was in the habit of castigating Mr. Sparks, decided that the company had only one indemnity belt, ten miles wide, and that the resolution of 1870 only changed the conditions of the original provision; and this he supported with a detailed argument. He went one step beyond this; he held that the company could not take indemnity lands in one state or territory to make good losses in the grant in another state or territory. The Northern Pacific road, for example, has selected four or five times as much indemnity land in Dakota as its losses in that territory amount to, because in Montana its line runs through Indian reservations. The language of the granting acts implies clearly

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enough that the lands to be taken as indemnity are to be those nearest to the sections lost within the primary limits of the grant, but this is not expressed so explicitly as to exclude doubt.

The Northern Pacific decision having been signed by Mr. Muldrow, the company asked Mr. Lamar for a rehearing. This he did not directly grant; but he gave it in substance the next time the railroad company sent in a list of selections of indemnity lands for approval, by referring the points involved to the attorney-general. The decision of the secretary in regard to the second indemnity belt and the taking of indemnity land in one territory to make good losses in another, was overruled by the late Judge Sleeper of the Minnesota bench, Judge Brewer of the United States circuit court, and finally by the attorney-general in an opinion dated January 17, 1888, and made public November 24, 1888, and accepted by Secretary Vilas, who thus reversed the ruling of his predecessor.

It had always been the theory of the General Land office that, whether the indemnity lands are taken ten miles or five hundred miles from the lands lost in place, they must be, as the act requires, those nearest thereto. But the practice could not have been a very severe application of this theory; for until the administration of Commissioner Sparks the railroad companies were not compelled to show what lands had been lost in place before getting the approval of their indemnity selections. In his decision of the Guilford Miller case, for example, Secretary Vilas recites the facts that the Northern Pacific railroad filed selections of 58,000 acres of indemnity lands in one list in 1883; that in 1885 Commissioner Sparks required the railroads to specify the deficiencies for which indemnity was to be taken; that in 1887 the Northern Pacific road complied with this requirement, claiming indemnity for 55,000 acres of land in the Yakima Indian reservation; that for four years the railroad selection was a cloud on the title of the 58,000 acres, which included Miller's farm; that nevertheless, when required to specify the deficiencies for which it was trying to confiscate the farms of Miller and of other settlers, the railroad company could only specify an Indian reservation two hundred miles dis-

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tant, lying along a branch of the projected road upon which the company had never done one stroke of work, and therefore absolutely unearned; and, finally, that the indemnity was claimed for this Indian reservation after the Supreme Court, in the case of Buttz against the Northern Pacific railroad,[1] had decided that the railroad company had acquired the Indian reservation under the grant, so that there was no loss to make good.[2]

Another reason for questioning the right of a railroad company to take land in Washington territory to make good losses in Oregon is that, in all of the land grants, it is provided that the granted lands shall be certified to the railroad company in blocks as each section of the road is completed. Sometimes the sections are ten miles, sometimes twenty, twenty-five, and even forty miles long. But when each section is completed it is to be examined for the government and accepted by it, and then the lands along that section are to be certified to the company; and, as the indemnity belt runs along by the side of the grant, it would seem to have been intended by Congress that all the lands certified to the company for constructing one section of road were to be opposite to that section. This construction, however, was repudiated by the Supreme Court in the Burlington and Missouri River railroad case.[3]

(2) The amount of indemnity land withdrawn from settlement is further increased by the decision of Secretary Lamar, in the Omaha case, that railroads may have indemnity lands for every sort of loss. In adjusting the land grant of the Chicago, St. Paul, Minneapolis and Omaha railway company, for brevity called the Omaha company, Commissioner Sparks refused to

[1] 119 U. S. 71.

[2] And yet, under Attorney-General Garland's construction of the readjustment act of March 3, 1887 (see *infra*, p. 475), the railroad company might have sold the 55,000 acres of indemnity land, including Miller's farm, and have obtained patents for the Indian reservation besides, and so have got 110,000 instead of 55,000 acres; and the only redress anybody could have got was the recovery from the railroad company, by the purchasers of the indemnity lands, of the $1.25 an acre which they had to pay the government to get their patents; and if the Interior department had kept these indemnity lands out of the market, awaiting the convenience of the railroad company till the land was worth ten or fifteen dollars an acre, this transaction might have been remunerative to both the railroad company and the purchasers.

[3] 8 Otto, 334.

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allow the company to take indemnity lands in lieu of 44,782 acres lost to the railroad because covered by a prior grant. Mr. Sparks' action was based upon the words of the granting act; upon the decision of the Supreme Court in the Leavenworth, Lawrence and Galveston case; and upon the decision of Secretary Schurz, which was based upon an opinion rendered by Attorney-General Devens after listening to exhaustive arguments on both sides of the question.

The act of June 3, 1856, making a grant of public lands to the state of Wisconsin in aid of railway construction, provided that

> in case it shall appear that the United States have, when the lines or routes of said road are definitely fixed, sold any sections or parts thereof granted as aforesaid, or that the right of pre-emption has attached to the same, then it shall be lawful

to make the loss good from the indemnity lands. The lands in question had not been sold, and no pre-emption rights had attached to them; so that apparently no indemnity was promised for them. This construction is corroborated by the concluding proviso of the same section, namely:

> *And provided further*, that any and all lands reserved to the United States by any act of Congress for the purpose of aiding in any object of internal improvement or in any manner for any purpose whatsoever, be and the same are hereby reserved to the United States from the operations of this act, except so far as it may be found necessary to locate the route of said railroads through such reserved lands, in which case the right of way only shall be granted, subject to the approval of the President of the United States.

If Congress meant to exempt previously granted lands only from the granting provisions of this act, the proviso I have quoted is a confusing piece of surplusage. "The operations of this act" cover the indemnity clauses just as much as the granting clauses. What the letter of the act seems to mean is that Congress gave the state for railway construction all of the odd-numbered sections of land within a certain belt that it had not previously reserved or granted; but that if, unknown to Con-

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gress, the local land officers had permitted any cash or pre-emption entries on these odd-numbered sections, the entries were to be respected and the railroad was to take other lands from the indemnity belt; and that all lands previously granted were exempted from the operations of all parts of this act with the single exception that the road could have a right of way across them. In the Leavenworth, Lawrence and Galveston case,[1] Justice Davis, who delivered the opinion of the court, quoted the proviso recited above and said:

> This proviso has in our opinion no doubtful meaning. Attached in substantially the same form to all railroad land-grant acts passed since 1850, it was employed to make plainer the purpose of Congress to exclude from their operation lands which, by reason of prior appropriation, were not in a condition to be granted to a state to aid it in building railroads.

The Leavenworth case did not involve just the same point that the Omaha case did, although one would imagine the contrary from language used in a later opinion of the Supreme Court and in a decision of Secretary Lamar. The railroad line in this case ran through the Osage reservation. After the Indian title was extinguished, the railroad claimed the odd-numbered sections along its line through the reservation, on the ground that the grant attached as soon as the reservation became a part of the public domain. The court held that no part of the Indian reservation was carried by the grant, because at the time the grant was made the Osage lands were reserved and by the terms of the granting act were exempted from its provisions, except that a right of way could be given through the tract. Justice Field, with whom Justices Swayne and Strong concurred, read a dissenting opinion setting forth that the fee of the Indian lands was in the United States; that that grant transferred the fee to the railroad company subject to the Indians' right of occupancy; and that, when this was extinguished, the railroad company got the land.

The question whether the railroad company was entitled to indemnity for the lands in place denied to it by this decision

[1] 92 U. S. 733.

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was not before the court. But in this and other cases it came before the secretary of the Interior, who referred the matter to the attorney-general for advice. General Devens recognized the enormous importance of a precedent in this matter, and resorted to the rather unusual course of having the matter argued before him. In the course of his opinion he said:

> The indemnity is not made in order that the road shall have necessarily a hundred sections of land for each ten miles in length of its road, but only so far as it is required to make its grant good. If there were, therefore, reservations within the granted limits to the United States, or if the road was not entitled to one hundred sections of land for any ten miles constructed by it in consequence of the curvature or sinuosities of the road in that division, there can be no indemnity for a deficiency thus arising. The indemnity is limited strictly by the sections lost in place, which were granted by the United States, but were previously or subsequently sold or pre-empted.

The Supreme Court, in the Leavenworth case, limited indemnity to losses by sale and pre-emption between the granting act and the definite location of the road; but the attorney-general construed this as *obiter dictum*, and, in view of other decisions, held that indemnity might be allowed for losses of these classes occurring before the grant. The language of Attorney-General Devens is as follows:

> It must be held, therefore, that all lands reserved to the United States by an act of Congress, or in any other manner by competent authority, for the purpose of aiding in any object of internal improvement, or for any other purpose whatever, under the last provision of the first section of the act of March 3, 1857, do not pass to the railroad companies, nor are said companies entitled to indemnity therefor.

Following the opinion of the attorney-general, Secretary Schurz rendered a decision[1] in which he says:

> The opinion farther holds that these grants embraced all lands contained in such sections, not sold, pre-empted, nor reserved at the date when said grants attach, and indemnity for such sections or parts of sections as may have been sold or pre-empted prior to such date, whether before or after the date of the granting acts. Such indemnity grant does

[1] Land Office Report, 1881, p. 158.

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not, however, apply to lands lost by reservation made by competent authority prior to the date of the respective acts. Such lands are held to have been absolutely reserved, by express provision, from the operation of the grants, and consequently can not be considered within them, nor affected by them for any purpose.

Commissioner Sparks' decision, based upon the words of the granting act and the Devens-Schurz construction of the opinion in the Leavenworth case, was brushed aside by Secretary Lamar in the words:

Whatever strength may have formerly been in this position was completely destroyed by the decision of the Supreme Court in the case of Winona and St. Peter railroad company *vs.* Barney, 113 U. S. 618.

There is no room for any difference of opinion as to the point that was decided in the Barney case. The Barney opinion was read by Justice Field, who read the dissenting opinion in the Leavenworth case; he had brought the court around to his way of thinking and the Barney decision was designed to destroy the Leavenworth decision. But in neither case did the court have before it precisely the point over which Secretary Lamar and Commissioner Sparks disagreed in the Omaha case. Justice Field stated in the Barney case:

Two questions are presented for our consideration by the appeal in this case. The first relates to the deficiencies in the sections designated as granted in the act of 1857 arising from sales and the attachment of pre-emption rights previous to the final determination of the route of the road of the railway company and the extent to which indemnity for those deficiencies may be supplied from other lands. The second relates to the reservation from the operations of the act of 1865 of lands previously granted to Minnesota to aid in the construction of any railroad, which were located within the limits of the extension made by that act to the original grant, and its effect upon the amount of lands claimed by the plaintiff.

Now the question in the Omaha case which we are considering is neither of these: it is whether, the lands previously granted being confessedly lost to the later grantee, the latter can get indemnity lands in place of them. This question not having been involved in the case at bar, the position of the com-

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missioner can not have been "completely destroyed" by the opinion in the Barney case.

But so far as the Barney case goes it sustains Commissioner Sparks and not Secretary Lamar. It not only decides that the later grantee can not have the land previously granted, but it affirms this even if its result is to reduce the amount of land the later grantee gets. It says that the later grantee is not entitled to a specific amount of land, and that, if it would require land previously granted to make good the later grant, the later grantee must go without. All this comes very close to saying that the later grantee can not have indemnity lands in place of lands within his limits covered by a previous grant, because if he can have indemnity lands, then he is going to get the full amount apparently covered by the grant. Justice Field says:

> As to the effect of the reservation in the third section of the act of 1865 of lands previously granted to Minnesota for the purpose of aiding in the construction of any railroad, there should be little doubt. The grant by the act of 1857 is one of description, that is, of land in place and not of quantity. . . . Previous grants of the same property would necessarily be excluded from subsequent ones. . . . It follows that where the grant previously made to Minnesota to aid in the construction of the Minnesota and Cedar Valley railroad interferes with the extension of the grant to the defendant by the act of 1865 the extension must be abandoned. The earlier grant takes the land.

This certainly does not "completely destroy" the commissioner's position. It does not affirm it, but so far as it goes it is in entire harmony with it. In what part of the Barney decision is the complete destruction of the commissioner's position to be found? It is to be found, if at all, in that portion of the opinion which relates to a totally different question. The first question before the court was whether indemnity could be taken for losses by sales and pre-emptions made before the date of the grant as well as for losses incurred afterwards. In discussing this question Justice Field expressed, in a very broad and general way, what the court assumed to be the intention of Congress in making the grant; concluding thus:

> It follows that in our judgment the indemnity clause covers losses

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from the grant by reason of sales and the attachment of pre-emption rights previous to the date of the act as well as by reason of sales and the attachment of pre-emption rights between that date and the final determination of the route of the road.[1]

[1] The Barney case, like that of Schulenburg *vs.* Harriman (cited on page 453, note), is illustrative of the present tendency of the Supreme Court. In the Schulenburg case the court circumscribed the obvious intent of Congress by the letter of the act; in the Barney case the letter of the act was disregarded in favor of the supposed intent of Congress; in both cases the decision was favorable to the land-grant roads.

In earlier decisions of the Supreme Court other principles of construction prevailed. In 1859, in the case of Dubuque and Pacific railroad company *vs.* Litchfield (23 Howard, 66) the Supreme Court through Justice Catron said: "All grants of this description are strictly construed *against* the grantees; nothing passes but what is conveyed in clear and explicit language; and as the rights here claimed are derived entirely from the act of Congress, the donation stands on the same footing of a grant by the public to a private company, the terms of which must be plainly expressed in the statute; and if not thus expressed they can not be implied. (Charles River Bridge *vs.* Warren Bridge, 11 Peters, 420.) We concur with the following citation and reasoning of the plaintiff's counsel, to wit: Lord Ellenborough in his judgment in Gildart *vs.* Gladstone, 11 East, 675 (an action for Liverpool dock dues), says: 'If the words would fairly admit of different meanings, it would be right to adopt that which would be most favorable to the interest of the public, and most against that of the company; because the company in bargaining with the public ought to take care to express distinctly what payments they were to receive; and because the public ought not to be charged unless it be clear that it was so intended.' 'The reason of the above rule is obvious — parties seeking grants for private purposes usually draw the bills making them. If they do not make the language sufficiently explicit and clear to pass everything that is intended to be passed, it is their own fault; while on the other hand, such a construction has a tendency to prevent parties from inserting ambiguous language for the purpose of taking, by ingenious interpretation and insinuation, that which can not be obtained by plain and express terms.'" Sixteen years later, in the case of Leavenworth, Lawrence and Galveston railway company *vs.* the United States (92 U. S. 733), the opinion was read by Justice David Davis, who quoted the preceding language from the opinion in the Litchfield case and then added: "It [this grant] should neither be enlarged by ingenious reasoning, nor diminished by strained construction. . . . If these terms are plain and unambiguous there can be no difficulty in interpreting them; but if they admit of different meanings — one of extension and the other of limitation — they must be accepted in a sense favorable to the grantor. And if rights claimed under the government be set up against it, they must be so clearly defined that there can be no question of the purpose of Congress to confer them. In other words, what is not given expressly, or by necessary implication, is withheld."

The opposite theory of extreme liberality to the grantee in the construction of these acts crops out three years later, 1878, in Missouri, Kansas and Texas railway company *vs.* Kansas Pacific company (97 U. S. 491), in which the opinion was read by Justice Field, who, with Justices Swayne and Strong, dissented from the opinion just quoted from. Justice Field said: "It is always to be borne in mind in construing a congressional grant, that the act by which it is made is a law as well as

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It is in leading up to this conclusion of an entirely different question that the court said:

> Nor was it the purpose of Congress to lessen the extent of its aid because it might ultimately be found that at the time of its grant, or when the route was determined, portions of the land designated had already been disposed of, or pre-emption rights had attached to them.

And this loose paraphrase of the language of Congress in regard to the dates of sales and pre-emptions for which indemnity may be taken is held by Secretary Lamar to be conclusive as to the right of the grantee to indemnity for lands covered by an earlier grant. The secretary, in his decision of the Omaha case, said:

> This plain language of the Supreme Court in the Barney case seems to be conclusive of the questions presented,

(which are wholly different),

> and to hold that lands so reserved for works of internal improvements when found within either granted or indemnity limits are not to be taken under the railroad grant; but if such lands are of the designated sections, within the primary or granted limits of the road, then the company is entitled to indemnity for all such lands so lost to the grant.

The court really said nothing about indemnity for reserved lands; it only held that the later grantee could not have these lands and implied that this would reduce the amount of land he would get, which it would not do if he could get indemnity lands.

But so far as the Interior department goes, it is now held that the reservation clause (about which Justices Davis and Field said there ought to be no misunderstanding) has been expunged from the granting acts and the railroads may have indemnity lands for every sort of loss of lands in place.

(3) Finally, an opinion of Attorney-General Garland, construing the readjustment act of 1887, has furnished a means of validating sales of indemnity lands made by the railroad com-

a conveyance and that such effect must be given to it as will carry out the intent of Congress. That intent should not be defeated by applying to the grant the rules of the common law, which are properly applicable only to transfers between private parties."

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panies prior to 1887, and has thus withdrawn extensive tracts of valuable land from settlement under the homestead and pre-emption laws. The act for the readjustment of railroad land grants, of March 3, 1887, was carried through Congress mainly by men like Congressmen Payson of Illinois and Anderson of Kansas, who have been branded with the name of demagogue by the employees of the land-grant railroads. It is hardly necessary to explain, after this, that it was not intended to benefit the railroad companies. It became a law on the last day of one session of Congress; but before the promoters of the bill returned to Washington at the beginning of the next session, this law had been touched by the Ithuriel's spear of the attorney-general and transformed into one of the most magnificent schemes for enriching the land-grant railroads that ever entered into the mind of a corporation lobbyist.

At various points in the West men had bought what purported to be railroad lands — lands within the granted limits; on the final adjustment of the grant, however, it was found that the land lay outside the limits of the grant. The railroad company then could give no title. The buyer was perhaps a non-resident, or he held more than 160 acres of land, and under these circumstances he could not get patent from the government under the homestead or pre-emption laws. His farm was, then, a part of the public domain, and the first tramp who came along might enter it. To remedy this injustice the readjustment law provided that the purchaser might pay the government $1.25 an acre for the land and get title. The protection was ample; the tax was not heavy.

But the railroad companies had made a practice of selling indemnity as well as granted lands. The secretary of the Interior had withdrawn the indemnity lands from settlement; the companies would sooner or later get patents for their lands, unearned as well as earned; and when they got patents they could give deeds. In Wisconsin and Michigan it did not matter much whether the purchasers ever got deeds. They purchased tens of thousands of acres of land within indemnity limits for the sake of the timber; and if the Interior department would

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keep these lands out of the market until all the timber was cu off, it mattered very little who ultimately got the patents. Bu when, in the summer of 1887, the secretary of the Interio ordered that all indemnity lands the selection of which had no been approved be thrown open to settlement, the lumber com panies were alarmed; if the secretary was not going to keep the indemnity lands withdrawn any longer, they must get title to the land from somebody. They knew they could not get title from the railroad companies, for these lands, they knew when they bought them, did not belong to the railroad compa nies; they had only bought of the railroad company the privi lege of trespassing on the public domain. Could these lumber companies avail themselves of the privileges of the act of March 3, 1887? To accomplish that end it must be held that purchas ers of indemnity lands as well as purchasers of granted lands might take advantage of the act; in other words, that the men who bought of the railroad companies what they and the rail road companies knew belonged to the United States, must be put on an equality with the men who bought of the railroad companies what they and the companies and the local land officers erroneously supposed belonged to the companies.

In an interview published in *The Chicago Times* in October, 1887, and in a letter to a resident of St. Paul, published in a paper in that city October 29, Commissioner Sparks stated that purchasers of indemnity lands purchased what they knew the sellers did not own and might never acquire title to, and were not equitably entitled to the protection of the act of March 3, 1887; and, furthermore, that they were not the purchasers within the limits of a railroad grant to whom the law expressly applied; that, consequently, he would not allow the lumber companies that had bought indemnity lands of the rail road companies to pay $1.25 an acre to the government and get title. October 14, 1887, according to a despatch to *The Chicago Tribune*, Frederick Weyerhauser (described as the "Pine-Land Czar of Wisconsin" and reputed to have made thirty million dollars out of lumber operations) and Edward Rutledge went to the land office in Eau Claire and offered $1.25 an acre

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for a tract containing some four thousand acres of pine land within the indemnity belt of a railroad. The local land officers refused to receive the money on the ground that they had no instructions to admit cash entries on this land. About the same time, on October 18, 1887, Secretary Lamar asked Attorney-General Garland to explain to him what the readjustment law meant; and on November 17 — ten days after Commissioner Sparks had resigned because Secretary Lamar, incensed at his pressing his opinion in the Omaha case, had told the President that he (Lamar) would resign if Sparks didn't — the attorney-general sent the secretary his construction of the law in question.[1]

This opinion is worth careful examination, for not many of its kind have emanated from the department of Justice. The attorney-general breaks down the distinction between the granted lands and the indemnity lands, between the lands that belonged to the railroad company and those that did not belong to it, in this style:

> The first section of the act, in the use of the word "grant," must have necessarily included both the primary and indemnity limits in the adjustment, as it was doubtless intended that the adjustment should be a full and final one. . . . The protection the settler by each of the sections is afforded and the redress granted is fully as important in the indemnity as in the primary limits. . . . The wrong done the settler who in good faith shall have purchased lands of the railroad company to which the company by the adjustment is shown to have no legal right is identical whether the purchasers are in the indemnity or primary limits.

The attorney-general evolves from his inner consciousness an intent on the part of Congress of which the promoters of the act, at least, were not conscious; and he then expands the meaning of the act to correspond, in order that he may confer the benefits of this act upon the settler who has in good faith bought indemnity lands and is liable to be left empty-handed by the readjustment of the railroad grant. The whole of this astonishing construction is disposed of by two facts: First, the purchaser of indemnity lands purchased what he knew the seller

[1] 6 Land Decisions, 272.

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did not and might never own, and such a purchaser does not stand on the same ground as the man who bought what was put down on the maps as granted land; and, in the second place, the *settler* needed no such construction of this law to protect his equities; he was amply protected under existing laws. It has been the uniform practice of the General Land office to recognize the rights of occupancy; and if a man settles on indemnity lands or on a military or Indian reservation, and is not ejected for trespass but is allowed to remain till the reserved or withdrawn lands are opened to settlement, he may then, within a certain reasonable time, enter under the homestead or the preemption law the quarter-section on which he has made his home. How could the chief law officer of the government have forgotten this? How could he have assumed that, unless he stretched the act of March 3, 1887 over the settlers on indemnity lands, they would lose their homes when the lands were thrown open to settlement? It was not the settler who needed this construction of the act. It was Mr. Frederick Weyerhauser and his associates and other great speculators and lumbermen, who were not settlers but great capitalists, and who, when they bought indemnity lands of the railroad companies, must be presumed to have known what they were buying and what they were not buying, — it was these men to whom this construction of the act was a necessity.

But the attorney-general had not yet made the act broad enough to meet all the necessities of the land-grant railroads. He continued:

> That the selection sold by the railroad company shall have been approved is not required by the fifth section, nor that it shall have been patented. That the land shall have been approved to the company before the purchasers shall be entitled to the benefit of the sixth section is not required. . . . It was not intended to limit the redress to cases in which the railroad could rightfully have sold the lands. The whole remedial part was passed with a recognition of the fact that the railroad companies had sold lands to which they had no just claim. . . . It is not required that the sale by the railroad company shall have been made on its part in good faith.

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Every land-grant act provides that the indemnity lands shall be selected by the secretary of the Interior or that the railroad selections shall be approved by him. This is, of course, to prevent the railroad company from taking more indemnity land than its losses in place entitle it to. The language of the attorney-general above quoted is an explicit declaration that a railroad that never lost one acre of its granted lands may sell every acre of the indemnity lands (after having them withdrawn from sale and settlement by the secretary of the Interior for a long term of years), and that the government will validate the sales for a dollar and a quarter an acre after the growth of population and the extension of the lumber business has carried the value of the land up to ten, thirty, and even fifty dollars an acre. Every acre of indemnity lands that Secretary Lamar purported to restore to the public domain in August, 1887, might, according to the attorney-general's opinion of November, 1887, be sold by the railroad companies to their own officers or to the lumber companies or to any other speculators, and the government would then give patents for $1.25 an acre. Where an act of Congress gives a railroad a thousand acres of land, an act of the attorney-general gives it twenty-five hundred acres.

III.

In his letter to the secretary of the Interior of March 14, 1887, Attorney-General Garland says, in justification of the withdrawal from settlement of indemnity lands along the line of the Northern Pacific railroad:

> It appears moreover to be in entire harmony with the provisions of the land-grant act, which, as already intimated, in effect made a corresponding withdrawal, and it accords with the practice of the Land Department in like cases.

I regret to say that the last statement is true; the withdrawal of indemnity lands does accord with the practice of the Land Department; but its entire harmony with the provisions of the

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land-grant act may be estimated from the fact that the act contained the following clause: [1]

> But the provisions of the act of September, 1841, and the acts amendatory thereof, and of the act entitled, "An act to secure homesteads to actual settlers on the public domain," approved May 20, 1862, shall be and the same are hereby extended to all other lands on the line of said road when surveyed, excepting those hereby granted to said company.

Could anything be more explicit than this language? The company was to have certain designated sections, and rights of selection in certain other sections; but, for fear that this latter might be construed into an exclusion of settlers from the sections where the road had only a contingent interest, the act expressly extended to them the homestead and pre-emption laws. When the Miller case reached Commissioner Sparks he decided that the clause I have quoted absolutely forbade the withdrawal of indemnity lands, and Secretary Vilas affirmed the judgment of Mr. Sparks, and said:

> In my opinion, and it is with great deference that I present it, the granting act not only did not authorize a withdrawal of lands in the indemnity limits, but forbade it.

But Attorney-General Garland has officially decided that the clause means nothing; and the practice of the Land office and the Interior department has expunged this clause from the granting acts.

But, if the intention of Congress was what it appears to be, it may be asked: Why did it submit to the practical repeal of its enactments by the General Land office? Every congressman has so many local interests to look after, so many personal errands to run for his constituents, that he rarely has time to consider any general legislation except that which has a strong political coloring and for which there seems to be a popular demand. Now the land questions are of special interest only in the territories, which have but a nominal representation in

[1] Which is common to all the land-grant acts, I believe, except the Texas Pacific where the withdrawal of the indemnity lands was prescribed. This grant, by the way, was never earned and was ultimately forfeited by Congress.

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Congress; and in the thinly settled and not over-wealthy territories about the only well-organized centres of influence are the land-grant railroads. Not much opposition to the railroad companies is likely to be found in the territorial newspapers, and it is much more convenient for the railroad companies than for the settlers to keep agents at Washington; and even the settlers might not regard the operations of the railroads as inimical to them: the land-grabbing in the territories is a wrong not to the people now in the territories, but to the people who will be going into the territories next year and the year after and ten years hence. These are the parties in interest, and they are now living in the states; and their congressmen do not know or care much more about public-land matters than they do about the Samoan question.

Here the matter now rests. In the Guilford Miller case the rights of settlers upon what is left of the indemnity lands are fully recognized; but by the friendly assistance of the Interior department most of these lands have passed into the possession of the railroad companies, or through their possession into that of purchasers. The Supreme Court of the United States has only begun to decide indemnity-land cases and its policy regarding them has not been fully developed.

FRED. PERRY POWERS.

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ITALIAN IMMIGRATION INTO THE UNITED STATES.

AS Americans we have only a platonic interest in the amount of emigration from Italy, the causes which produce it and the real or probable effects on the prosperity of that country. But we are, or should be, deeply concerned in the amount of this immigration when it is directed to our own shores, in the character of the immigrants and in their capacity of becoming useful inhabitants. It is difficult, however, entirely to separate the two classes of questions, and the few observations I have to offer must in a measure include both.[1]

The Italian official statistics are admittedly inaccurate. Under the old laws there was no method of ascertaining the number of persons who left Italy either by sea or by the land frontier. The only way of roughly estimating the emigration is from the number of passports and the certificates of no impediment (*nulla osta*) issued by the communal authorities. The number of pass-

[1] My authorities are as follows:

1. Annuario Statistico Italiano, Anno 1886 (Roma, 1887).
2. Statistica dell' Emigrazione Italiana, 1887 (Roma, 1888).
3. Emigrazione Italiana all' estero avvenuta nell' anno 1888, confrontata con quella del 1887. (Extract from the Italian *Official Gazette* of March 1, 1889; No. 64.) Statistical department of the ministry of Agriculture, Industry and Commerce.
4. Appunti di Statistica comparata dell' Emigrazione dall' Europa e dell' Immigrazione in America e in Australia. (Taken from the *Bulletin* de l'Institut international de statistique, t. iii, 1888; Rome, 1888.)
5. Luigi Bodio: Sulla condizione dell' Emigrazione Italiana. (Proceedings of the Academy Dei Lincei, Nov. 18, 1888.)
6. Legge sull' Emigrazione di 30 dicembre 1888.
7. A. Brunialti: L'Esodo degli Italiani e la legge sull' Emigrazione (*Nuova Antologia*, vol. xvi, ser. 3).
8. Francesco S. Nitti: L'Emigrazione Italiana e i suoi avversari (Turin, 1888).
9. Gio: Batt: Scalabrini (Vescovo di Piacenza): Il disegno di legge sulla Emigrazione Italiana (Piacenza, 1888).
10. Emigration and Immigration: Reports of the Consular Officers of the United States (Washington, 1887).

The figures in the tables are all taken from the official documents. Five *lire* are represented by one dollar.

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ports is an insufficient guide, because an indeterminate number of persons go abroad without passports, either as travellers or in order to escape military service or arrest. Passports are of two kinds, given according to the condition of the persons asking for them: the poorer classes, from whom most of the emigrants come, pay a passport tax of only 2.40 *lire*, while on others a tax of 12.50 *lire* is imposed. The majority of the passports issued at the lower rate can be properly considered as given to intending emigrants, and this is therefore the statistical basis.

Italian emigration must be divided into two kinds: temporary and permanent. The former consists of the masons, smiths, navvies and day-laborers of all kinds, who leave Italy every spring to seek work on the railways, canals and public works in other countries, as well as in the large (especially the seaport) towns, such as Marseilles, where they receive employment as stevedores and porters. They generally return in the autumn with what they have earned in the summer, though sometimes they remain away more than a year. Their number has varied in the neighborhood of 100,000 yearly for some years past: in 1887 it had gone down to 88,000; in 1888 it had increased again to over 95,000. Permanent emigration consists of those who leave Italy without any *immediate* intention to return: it is doubtful if more than a very few have ever given up the hope of returning at some period, after they have amassed abroad a sum sufficient to make the remainder of their life easier. This class of emigrants — and all who cross the sea are considered permanent emigrants — has increased with great rapidity during the last ten years. In 1878 there were about 20,000; in 1886 about 85,000; in 1887 they had increased to 128,000; and in 1888 to over 195,000. Many of the so-called temporary emigrants become permanent by embarking for America from Marseilles or some other French port. The statistics of Italy therefore differ from those of the countries to which the emigrants go. In 1887, for instance, according to the Italian passport declarations, the emigrants for America were: To the United States 37,221; to Canada 1632; to the Argentine 52,383; to Uruguay 1295; to Brazil 31,445, — in all 122,681, —

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whereas, according to the statistics of the countries of their immigration, there arrived in the United States 46,256; in the Argentine 67,139; in Brazil 40,153, — in those countries alone 153,548, without counting those arriving in the other states from which we have not sufficiently recent statistics. There is no need, however, to lay much stress on this difference in the number of emigrants, as the proportions given by the Italian statistics will probably remain the same, and some of the tables to follow have nothing to do with the emigrants as such.

Some of the so-called permanent emigrants are constantly returning to Italy. In answer to an inquiry, Sig. Bodio, the amiable director of the Statistical department, wrote to me as follows:

> It results from the tables of the port officers that, in 1888, there landed at Genoa, Naples, Palermo and Brindisi 31,954 Italian passengers (27,221 males and 4733 females), of whom 3233 were of the first or second class. Of these 31,954, 18,855 came from the Argentine; 2525 from Uruguay; 2486 from Brazil; 449 from other parts of South America; 6331 from the United States; 544 from Tunis; 764 from Egypt.
>
> In giving you these statistics I think it well further to observe that the above figures, 31,954, are within the actual number, as they do not include those who landed at other ports of the kingdom, nor those who landed at foreign ports, such as Marseilles and Bordeaux, and who re-entered Italy by the land frontier; and further, those are not included who land at Genoa, Naples, *etc.*, coming from a European port.

According to the replies made by the communal authorities to official questions, those emigrants who have returned to Italy are generally better off than when they went. Most of them have made a good provision for their old age, and some — especially in the province of Genoa — are even rich. The replies from the Southern provinces were that all who had returned were fairly well off.

In comparing the total of emigration with that of the inhabitants of Italy, we find that in 1887 for every 100,000 inhabitants there were 426 permanent and 294 temporary emigrants.

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The transoceanic emigration from Germany for the same year amounted to 213 per 100,000; and in Great Britain and Ireland to 770. Italy, however, is one of the most thickly settled countries in Europe, having a population of 105 to the square kilometre, while Germany has only 87, France 72, and Austria Cis-Lithania 74. At the same time the excess of births over deaths in Italy per 1000 inhabitants is 10.51, while the emigration is little more than three per 1000.

As will be seen by Table A, the principal centres of emigration are Venetia, Piedmont, Lombardy, Campania, Calabria, the Basilicate, Abruzzi, and Tuscany.

TABLE A.

ITALIAN EMIGRATION: TERRITORIAL DISTRIBUTION.

REGIONS.	Population, Dec. 31, 1885 (as calculated).	1887, Total emigration per 100,000 population.	1887, Total permanent emigration.	1887, Emigration to the United States.	1888, Total permanent emigration.
Piedmont	3,173,303	927	12,180	962	13,212
Turin	1,052,065	911	4,702	735	4,825
Liguria	919,185	632	4,734	779	5,224
Genoa	784,814	731	4,706	773	5,208
Lombardy	3,838,360	601	12,784	238	15,792
Venetia	2,954,595	2,523	26,239	182	81,042
Emilia	2,261,660	268	1,817	260	9,033
Tuscany	2,294,605	599	4,606	628	4,765
Lucca	296,343	2,877	2,911	530	3,154
Marches	978,447	242	2,057	22	2,599
Umbria	598,479	20	45	23	39
Rome	937,712	1	—	—	18
Abruzzi and Molise	1,386,817	1,018	12,447	9,933	11,684
Campobasso	385,140	2,605	9,084	7,983	7,843
Chieti	361,281	866	2,858	1,472	2,953
Campania	3,011,748	764	20,786	9,431	21,355
Benevento	252,439	1,097	2,464	1,595	3,686
Caserta	746,288	518	2,928	2,012	2,470
Salerno	573,683	2,010	11,060	5,135	9,703
Apulia	1,675,471	85	908	425	1,332
Basilicate (Potenza)	549,699	2,312	12,058	5,997	8,535
Calabria	1,304,980	1,047	12,938	5,250	14,978
Catanzaro	446,749	1,013	4,353	2,398	5,092
Cosenza	470,605	1,878	8,280	2,773	9,625
Sicily	3,103,206	159	4,148	3,085	5,603
Palermo	735,662	320	2,147	2,112	2,678
Sardinia	711,518	20	1	6	—
Total for Kingdom	29,699,785		127,748	37,221	195,211

In Venetia the emigration — especially from the provinces of

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Belluno and Udine — was formerly only temporary, but now is becoming permanent; and instead of seeking summer employment in neighboring countries, the inhabitants are emigrating in large numbers to South America. While the temporary emigration increased from 44,753 in 1887 to 50,792 in 1888, the permanent emigration increased in the same time from 26,239 to 81,042. In Piedmont the greatest temporary emigration is from Cuneo on the French frontier; the greatest permanent emigration is from the province of Turin, which contains the largest city. In Lombardy the temporary emigration remained about the same in 1888 as in 1887 (over 9000), whereas permanent emigration increased by 3000, from nearly 13,000 to nearly 16,000; chiefly from the province of Mantua, that from Como having fallen off. The permanent emigration from Campania was about the same for those two years, being 20,786 in 1887 and 21,355 in 1888; it is chiefly from the provinces of Salerno, Avelino, Benevento, and Caserta, that from Salerno amounting to more than the rest put together. That from the province of Naples is comparatively small, owing to the cheapness of life in that large town and the easiness of getting a livelihood; these, taken together with the pleasure of living there, destroy the inducements to emigrate. Naples is perhaps the only large city where the pure delight of living at all counterbalances the desire to live better. In Calabria the emigration increased in these two years by about 2000; being 12,938 in 1887, and 14,978 in 1888. Two-thirds comes from the province of Cosenza, most of the remainder from that of Catanzaro, the emigration from Reggio being hardly worth mentioning. The emigration from the Basilicate fell off, from 1887 to 1888, from 12,058 to 8535. The emigration from the Abruzzi also fell off in the same years from 12,447 to 11,684, three-fourths of it coming from the province of Campobasso, the remainder chiefly from Chieti. The total emigration from Tuscany also fell off from 13,226 to 11,739; nearly all of this coming from Lucca and Massa Carrara. Even what is put down as permanent emigration from these last provinces is strictly only temporary, as it consists almost entirely of plaster-image makers and sellers, peddlers and gardeners,

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nearly all of whom return after a few years with a respectable sum of money. It should be remarked that the *compartimenti* or ancient divisions of Italy are by no means equal in size and population. It is an interesting fact that from the province of Latium, which includes Rome, the emigration in 1887 was only ten, and in 1888 only twenty-five.

The small amount of emigration from the large cities of Italy is peculiarly noticeable. Naples is the largest town, and has a density of population superior to that of London, Paris, Berlin, or Vienna; yet its emigration is less than from many a good-sized village of the Basilicate or Calabria. This is very evident from the following table of the total emigration (both permanent and temporary) from the largest Italian towns in 1884, 1885 and 1886:

TABLE B.

EMIGRATION FROM ITALIAN CITIES.

	POPULATION.	EMIGRATION.		
		1884.	1885.	1886.
Naples	494,314	786	800	965
Milan	321,839	1,128	1,141	1,218
Rome	300,337	9	8	4
Turin	252,832	1,494	1,749	1,821
Palermo	244,991	307	386	284
Genoa	179,515	182	223	322
Florence	169,001	20	77	94

The causes of emigration from Italy are in part the same as from other countries: bad harvests, low wages, want of work, desire to get on in the world or to lay up money, and invitations of friends who have already emigrated. But the main cause of the great emigration from South Italy can only be expressed by the word "*misery*." In the reports made by the provincial authorities as to the causes of emigration, the prefect of Potenza says as follows:

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Without doubt misery is the prime cause which incites the departur of agricultural laborers and others, *because their wages are not enoug for the needs of life*, whilst on the other hand the rent of dwellings an of land and the interest on capital rise. This last has risen enormousl in these last years, so as to average for small sums — reckoning in a the necessary expenditure — even as much as 60 per cent. For in stance, a loan is made in May to a laborer of a hectolitre of grain, wit the obligation of paying it in August with one and a quarter. Th *metayer* system being in use here only in rare instances, each laborer family is forced to rent from a proprietor a portion of land, and as the cannot cultivate it with what remains over from the last harvest, nor fror the profit of labor they have rendered to landowners and large tenant farmers, they are obliged to borrow in order to purchase seed and fc the subsequent tillage. The agricultural laborer has also to bear th heavy expense of renting a dwelling house, there being none on th lands.

The Deputy Fortunato said at the Peoples' Banks congress a Bologna :

How often in my journeys through this province has come before m the same monotonous and uniform scene : the country deserted, poo in vegetation, very poor in inhabitants ; the streams are torrents, th slopes are cut up by landslips, the old forests are cut down ; the cultur is merely on the surface, the lands have no roadways ; the holdings hav either uncertain titles, and are the source of public and private litiga tion, or are burdened with mortgages and loans ; only here and there, a long intervals, there are clusters of wretched cottages at the top of som hill ; above is a village safe from malaria and bandits.

Sig. Nitti writes in his pamphlet :

He who has not closely seen the state of the laborers in Southern Italy can have no idea of the misery which obliges them to leave thei native land. Add to this the sloth and vileness of the ruling class In some provinces every citizen who can count on 500 or 600 *lire* o annual income thinks himself justified in not working and, as they say " lives on his rent." Nowhere have I seen so large a number of vagrant and of those who live on their rents as in Southern Italy. I can recal in a place in the Basilicate a wretched village, very poor and miserable from malaria and emigration, in which of a population of about 500(there were *seventy-two* priests, and three times as many of those *livin on their rents* with no other occupation than village politics. Now al these idlers must live on the scanty produce of their lands, which they

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ase at monstrous prices to poor laborers who, to cultivate them, are bliged to have recourse to the cankerworm — small usury. Now the nall usury of the South is something terrible. On every *lira* they pay ve centimes or even ten centimes per week — usury varying from 60 to 20 per cent yearly. . . . The loan and savings societies in Southern aly are mere risky institutions in the hands of a few speculators. The oduce banks (*monti frumentari*), good and worthy institutions which ie greed of the managers has ruined, are at an end or are dying out ear by year, and agricultural credit scarcely exists. "The country- an," says the report of the prefect of Potenza, "is obliged to remain the condition of a daily laborer. . . . The benevolent institutions rofessedly for the help of laborers, are really obliged to favor the land- wners." . . . Whilst in Piedmont 15 per cent of the inhabitants are wners, in Liguria 10.30, in Lombardy 5.72, the average in the Neapol- an provinces does not exceed 3.48. . . . Look at the Basilicate: of 10,000 inhabitants there are, of both sexes, but 15,086 working their wn lands, and about 10,000 having a competency and capitalists. leanwhile there are 120,666 laborers who must daily fight the hard ght with want, and about 230,000 without profession who live at the xpense of a population which is poor, and one may say without a ture. The *metayer* system being almost unknown in the South, the rmer is obliged to hire land. In short, the tenants, owing to great dis- ress and heavy burdens, are even disappearing. Whilst the proportion f tenants in Lombardy is 13.01 per cent, in Venetia 15.84, the per- entage barely reaches 8.19 in the Neapolitan region, while that of borers is 54.11. I have seen the few tenant-farmers of the Basilicate, ictims of a barbarous system of lease, working in despair with the lesire to clear off the debt contracted for seed-corn; and often, too ften, the crop was in value below the cost of the rent and labor.

The emigrants from the North of Italy, except from the rovinces of Padua, Treviso and Rovigo, nearly always have ufficient money for their journey; often enough for their eturn; and some carry an additional amount for emergencies. Those from the provinces above named, as well as from Southern taly, rarely have enough for their journey even after selling heir cottages and their cattle. In general, however, there is a lisinclination among the emigrants to sell what little land they nay possess, and thus actually separate themselves from their ative country; they either let it or leave it to those of their amily who stay behind. Very often they are obliged to borrow

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money for the expenses of their outward journey. Sometim they borrow in common, with a mutual guaranty for paymen and, according to the reports of some of the syndics, have bee forced to pay usurious interest as high as 50 per cent. Of la years some of the South American governments have offere special inducements for emigration; this is particularly the cas with Brazil, and emigrants to the province of S. Paolo have bee given a free passage and a subsidy on their arrival. It is to th provinces of S. Paolo and Rio Grande do Sul that Italian em gration is chiefly directed. Unfortunately, owing to mismar agement, very many emigrants accept these propositions witl out their contracts being in proper form. The local authoritie refuse to do anything for them; they are reduced to extrem misery, and large numbers of them have been just sent hom to Italy at the government expense. Similar misadventure have befallen emigrants to Mexico and Costa Rica who ha accepted the offers of private companies.

It is in part to remedy this state of things that the law o emigration was recently passed by the Italian Parliament.

This law, promulgated December 30, 1888, is both more sever and more moderate than the project presented by Sig. Crisp twelve months before. Its moderation consists in recognizing in theory the right of emigration of all Italians who have ful filled the obligations imposed on them by law, — more particu larly of course those relating to their military duties, — and i imposing no penalty on incitement to emigration unattended b the hope of pecuniary gain. Its severity was called out by th revelations made to the congressional committee in the Unite States with regard to the practices of Italian emigration agent and *padroni*. Its provisions are, summarily, as follows:

Soldiers of the first and second category on unlimited leave canno go abroad without a previous permission from the minister of War. N one can enroll emigrants, sell or distribute tickets or otherwise assist emi gration, for the sake of gain, unless he has obtained a license as agen from the minister, or as sub-agent from the prefect. No license will b issued to a person who has been convicted of crime. The agent mus deposit caution money to the amount of 600 or 1000 dollars; and hi

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ense can be withdrawn if he has not conformed to the law, or assists the emigration of men liable to military service, of fugitives from stice or escaped convicts, or of minors destined to itinerant employments such as organgrinders, peddlers, *etc.* The sub-agent is nomiated by the agent, who is responsible for his acts, and is approved by e prefect. The emigrant is liable to the agent or sub-agent for nothing compensation for mediation or otherwise, and solely for the sums tually disbursed for him; and the agent infringing this rule is liable to fine of ten times the sum received. Between the emigrant and the ent there must be a contract in triplicate (one copy to be given to e emigrant, one to the captain of the port of embarcation, and one to retained by the agent) which, besides the name, age, profession and st domicile of the emigrant, must show the date of military leave and e permission of the minister of War; the place of departure and the ace or port of destination; the approximate date of departure; the me of the ship and the berth assigned to the emigrant, with guaranties sufficient space according to existing regulations; where the voyage not direct, the time and place of stoppage for change of ship and the me and description of the new vessel; if the passage is wholly or rtly gratuitous, the total or partial price of passage, including the cost sustenance on board, which must not be inferior to the standard tablished by previous regulations; the quantity of baggage which the nigrant can take. All contracts obliging the emigrants to pay price passage by personal service or days' work are null and void. The nigrant can claim double what he has paid for the passage if this has en paid either in whole or in part by a government, by an emigration ciety or by a colonization agent. Persons who act as emigration ents for gain without a license, or who contravene this law or the gulations made in accordance with it, will be punished with 100 to 00 dollars' fine and one to six months' imprisonment. Shipowners, ptains and charterers who receive on board emigrants without a conact will incur, if Italians, the same penalty, and the captain will be spended; if they are foreigners, a triple fine will be imposed.

This would seem to prevent any man emigrating on his own count; although this difficulty will probably be got over by nsidering him as a passenger and not an emigrant, and will obably be provided for by a regulation.

While this law seems well devised for putting an end to impotions practised on Italian emigrants by agents and contractors, is also designed to hinder the emigration of the better elements the population; especially of young men in robust health and

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possessing the elements of education, and particularly those f for military and naval service. It is harmful to our interests i exactly the proportion that it is advantageous to Italy. It d prives us of the better class of immigrants; we shall therefor have to use the greater vigilance in preventing the immigratio of persons whom we do not want. At the same time the pr visions of this law would render it comparatively easy for us t satisfy ourselves as to the character and condition of the inten ing emigrants before their departure for America.

Mr. George L. Catlin, our consul at Zurich, proposed to th congressional committee on immigration a scheme of consula supervision of emigration which seems perfectly practicable fo a small country like Switzerland; and with the help of this la and the active good will of the Italian authorities, it might b made to work well in Italy. Mr. Catlin's plan is in substanc the following:

(1) Every person intending to emigrate to the United States mus declare his intention at least three months beforehand to the neares United States consul; bringing with him an official certificate from th mayor or other officer of his town, showing him to be a person of goo character and standing in the community.

(2) The applicant's declaration of intention — specifying domicile occupation, names of parents, whether married or single, whether eve sentenced for crime, *etc.* — is to be made in triplicate.

(3) The consul makes inquiries, and if the replies are not satisfactor refuses to authenticate the applicant's declaration.

(4) If satisfactory, the consul authenticates, keeps one copy, return one to the emigrant, and sends one to the United States treasury o custom-house. The emigrant's copy serves as his permit for landing.

Most of this information would be furnished, according to th Italian law, by the contract with the emigration agent. Wha remaining information is desirable could probably be easil obtained if our government were to enter into a diplomatic agreement with Italy for this purpose. The regulations whic are required by the Italian law, and which must be made i order to carry it out, could easily be so worded as to compel th communal authorities to indorse on the emigrant's passport o application all the information which we should need.

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In the accompanying tables I have endeavored to show the eneral character of Italian emigration; more especially of that art of it which is turned towards the United States; and for iat reason, in Tables C, D, and E, I have included only those arts of Italy from which the emigration to the United States chiefly derived. It will be seen from Table A (page 483) iat by far the greater part of the emigration to the United tates comes from South Italy, especially from the regions of ie Abruzzi, Campania, the Basilicate, Calabria and Sicily. 'he emigration from these provinces to the United States, ccording to the Italian statistics, amounted in 1887 to 31,696 s compared with 5525 from the remainder of the kingdom; r about 85 per cent of the total. Table C, which shows the migration from these provinces according to age and sex, would eem to show from the number of women and children — which ; proportionally increasing every year — that such emigrants re likely to be permanent settlers.

TABLE C.

ITALIAN EMIGRATION, ACCORDING TO AGE AND SEX, FROM CERTAIN PROVINCES FOR THE YEAR 1887.

	Men.		Women.		Children under 14.	
'iedmont	7,423		4,362		2,375	
Turin		2,909		854		939
.iguria	2,960		1,152		622	
Genoa		2,932		1,152		622
'uscany	3,484		696		426	
Lucca		2,390		362		159
ıbruzzi	9,714		1,169		1,564	
Campobasso		7,048		767		1,249
Chieti		2,234		350		274
:ampania	13,541		4,233		3,012	
Benevento		2,190		117		157
Caserta		2,062		511		355
Salerno		6,321		2,801		1,938
'otenza	7,058		2,865		2,135	
:alabria	9,891		1,621		1,418	
Catanzaro		4,016		200		137
Cosenza		5,620		1,407		1,253
;icily	2,426		764		958	
Palermo		1,131		436		580
:otal for Kingdom	78,636		25,860		23,252	

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Table D shows the occupations of male emigrants over fourteen years of age from the same provinces.

TABLE D.

OCCUPATION OF MALE EMIGRANTS FROM ITALY OVER 14 YEARS OF AGE, FOR THE YEAR 1887.

	Agricultural laborers, shepherds, *etc.*	Masons and stonecutters.	Day laborers.	Artisans.	Miscellaneous and unknown.
Piedmont	4,824	376	797	738	688
Turin	1,839	173	201	276	420
Liguria	1,787	167	344	319	337
Genoa	1,774	163	343	317	334
Tuscany	1,192	152	1,297	440	354
Lucca	759	49	880	373	329
Abruzzi	8,243	493	335	440	203
Campobasso	6,369	399	117	116	44
Chieti	1,593	82	135	280	144
Campania	8,359	1,690	1,809	736	947
Benevento	1,390	395	195	168	44
Caserta	1,594	48	157	161	102
Salerno	3,620	743	1,016	358	584
Basilicate	5,327	328	607	627	167
Calabria	6,392	326	1,722	876	575
Catanzaro	2,329	137	1,122	165	263
Cosenza	3,982	163	542	702	189
Sicily	1,055	107	374	496	394
Palermo	488	30	57	267	289
Total from above regions,	37,139	3,639	7,285	4,672	3,665
Total for Kingdom,	50,882	5,536	10,437	6,491	5,390

It will be seen from this that, of the total of 56,400, the number of common laborers, whether farm hands, masons or others, amounts to 48,063, or about 85 per cent. The number of artisans was 4672, while 3665 are put down as miscellaneous. Of these last, 518 only are classified as of the mercantile class, 300 as peddlers, 69 as theatrical artists, 43 as painters, sculptors, engravers, *etc.*, 229 as doctors or as belonging to other liberal professions, and 175 as servants. Even the artisans — not highly skilled at that — and those of other occupations may be obliged to become simple day-laborers on reaching the land of their destination through the want of work in their own lines.

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Table E shows the character of the emigration from the aforesaid provinces for illiteracy, and for economy — so far as the state of the savings banks is any criterion.

TABLE E.

ILLITERACY AND THRIFT.

	Illiteracy.			State of Savings Banks on Dec. 31, 1885.	
	Percentage of *illiterates* over 6 years of age, according to census of 1881.	Illiterates married in 1885, percentage on hundred couples.	Illiterates, percentage among conscripts born in 1865.	Number of depositors.	*Amount* in dollars.
Piedmont . .	32.27	17.48	17.85	304,174	31,032,500
Turin . .	25.10	11.44	11.80	143,095	14,991,100
Liguria . . .	44.49	28.71	30.74	109,827	11,977,700
Genoa . .	45.50	29.10	33.16	97,984	11,240,000
Tuscany . . .	61.92	51.15	47.49	291,690	27,375,200
Lucca . .	58.87	46.54	40.55	40,062	4,404,000
Abruzzi . . .	80.61	72.54	62.55	40,306	1,907,300
Campobasso	82.06	75.89	58.16	10,933	301,700
Chieti . .	82.24	76.61	68.63	12,992	516,900
Campania . .	75.22	68.86	57.83	219,431	16,720,300
Benevento .	81.80	75.23	66.91	5,962	145,300
Caserta . .	78.04	73.72	66.21	35,715	1,215,600
Salerno . .	80.04	74.47	67.19	25,496	1,227,000
Potenza . . .	85.18	79.45	67.70	15,741	689,000
Calabria . . .	84.97	82.53	69.98	36,846	1,870,700
Catanzaro .	83.79	81.92	60.64	15,195	557,500
Cosenza .	86.36	83.23	73.34	11,768	982,500
Sicily . . .	81.18	76.33	69.52	160,831	12,952,300
Palermo .	74.10	65.05	58.38	57,237	3,532,300
Total for Kingdom . .	61.94	54.92	46.37	2,717,867	284,022,700
	of which	of which			
	Males, 54.56 Females, 69.32	Males, 44.32 Females, 65.56			

The statistics of illiteracy are of three different kinds: in those giving the illiterates over six years of age, of course all the very old men and women are included; those relating to marriage include both men and women of various ages, but most of them young; among the conscripts the illiterates are young men of twenty, all of whom ought to have had a chance of receiving instruction, and all of whom have been born since Italy became a united country. It must be added that such is the progress of education that the percentage of illiterates among

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married pairs and among conscripts diminishes yearly, though more in the North than in the South of Italy. Of the emigrants coming to the United States in all probability 82 per cent — or to take the figures in their most favorable aspect, at least 78 per cent — do not know how to read and write. We therefore have to deal with an ignorant class of immigrants.

Now as to their thrift. In the statistics of the savings banks are not included the *monti di pietà* or government pawnshops; the *casse di prestanze agrarie* or agricultural loan-banks; or the various *opere pie, i.è.*, benevolent institutions. Into the condition of these last, and especially as regards the amount of money wasted in the management, an inquest is now in progress; and it is hoped that a complete reform will soon be made. The thrift of Southern Italy, as shown by the savings banks, by no means compares with that of Northern Italy; nor do the country districts approach in that respect the large towns. According to what has been quoted above, the savings institutions in some parts of South Italy have not been a benefit to the class from which emigration is derived. But the poverty of the peasantry by no means argues a want of thrift; for we find that the emigrants who have returned with a little money are then able to display those economic qualities which distinguish Italians. For they are a frugal, temperate, and industrious race. The existence of the public lotteries has often been brought up as a proof of Italian thriftlessness; but statistics prove, curiously enough, that even in districts where the amount spent in lotteries increases, the amount deposited in savings banks increases in even greater proportion. As the Italians are notoriously hard-working and industrious, they would prove extremely desirable settlers and, in the second generation, good citizens, for the habit of thrift is one to be encouraged rather than discouraged in America; and fears lest they might introduce a lower style of living to the detriment of the country seem, at least to the writer, unfounded. In countries like the Argentine and Uruguay, where (partly owing to their numbers and concentration) they do not have so many difficulties of language to contend with, the Italians have proved a very desirable class of

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settlers; and in the province of Rosario, for instance, they are predominant. In other parts of the Argentine they have much of the trade in their hands and control most of the river navigation.

As to the general morality of the Italians, the reports of our consuls give a very favorable account. The percentage of illegitimacy is very small; but Italy is a country in which marriages are made very early. I have not attempted to give any criminal statistics, because, on studying them, I found that the districts of the Court of Appeal did not coincide with the territorial divisions and that the laws still varied in the different parts of the country — unity in criminal legislation and criminal justice not yet having been attained. Add to this that criminal statistics are in general worthless, except in comparisons with other countries, — and even then are worth little, unless there be a certain equality in civilization and a similarity in the modes of administering justice.

Perhaps I may be allowed to give my personal experience. I have travelled in almost every part of Italy at all times of day and night, and have never been in any way molested or had any suspicion of trouble. I have lived now for over three years on the outskirts of Alassio, a town of 6000 inhabitants, about half-way between Nice and Genoa. Theft here is rare, burglary unknown; so that we have slept for weeks with doors unlocked and even open — after the earthquake for instance — and never think of locking them during the day, though the house may be quite deserted. A murder has not been known here for fifty years, until recently in a quarrel between workmen from distant provinces. Illegitimate children are very rare; crimes produced by lust are almost unknown.

Taking everything together it would seem that the Italians, in spite of poverty and illiteracy, are — if they will remain in the United States — a desirable element to fuse with our motley population. They bring to us the logical qualities of the Latin race, and they show in the long run the effect of an experience which no other people in Europe has had — of over two thousand years of civilization.

EUGENE SCHUYLER.

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THE MATERIALS FOR ENGLISH LEGAL HISTORY.

A DISTINGUISHED English lawyer has recently stated his opinion that the task of writing a history of English law may perhaps be achieved by some of the antiquarian scholars of Germany or America, but that "it seems hardly likely that any one in this country [England, to wit] will have the patience and learning to attempt it."[1] The compliment thus paid to Germany and America is, as I venture to think, well deserved; but a comparison of national exploits is never a very satisfactory performance. It is pleasanter, easier, safer to say nothing about the quarter whence good work has come or is likely to come, and merely to chronicle the fact that it has been done or to protest that it wants doing. And as regards the matter in hand, the history of English law, there really is no reason why we should speak in a hopeless tone. If we look about us a little, we shall see that very much has already been achieved, and we shall also see that the times are becoming favorable for yet greater achievements.

Let us take this second point first. The history of history seems to show that it is only late in the day that the laws of a nation become in the historian's eyes a matter of first-rate importance, or perhaps we should rather say, a matter demanding thorough treatment. No one indeed would deny the abstract proposition that law is, to say the least, a considerable element in national life; but in the past historians have been apt to assume that it is an element which remains constant, or that any variations in it are so insignificant that they may safely be neglected. The history of external events, of wars and alliances, conquests and annexations, the lives of kings and great men, these seem easier to write, and for a while they are really more attractive; a few lightly written paragraphs on "the manners and customs of the period" may be thrown in, but they must not be very

[1] Charles Elton, *English Historical Review*, 1889, p. 155.

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long nor very serious. It is but gradually that the desire comes upon us to know the men of past times more thoroughly, to know their works and their ways, to know not merely the distinguished men but the undistinguished also. History then becomes "constitutional"; even for the purpose of studying the great men and the striking events, it must become constitutional, must try to reproduce the political atmosphere in which the heroes lived and their deeds were done. But it cannot stop there; already it has entered the realm of law, and it finds that realm an organized whole, one that cannot be cut up into departments by hard and fast lines. The public law that the historian wants as stage and scenery for his characters is found to imply private law, and private law a sufficient knowledge of which cannot be taken for granted. In a somewhat different quarter there arises the demand for social and economic history; but the way to this is barred by law, for speaking broadly we may say that only in legal documents and under legal forms are the social and economic arrangements of remote times made visible to us. The history of law thus appears as means to an end, but at the same time we come to think of it as interesting in itself; it is the history of one great stream of human thought and endeavor, of a stream which can be traced through centuries, whose flow can be watched decade by decade and even year by year. It may indeed be possible for us, in our estimates of the sum total of national life, to exaggerate the importance of law; we may say, if we will, that it is only the skeleton of the body politic; but students of the body natural cannot afford to be scornful of bones, nor even of dry bones; they must know their anatomy. Have we then any cause to speak despondently when every writer on constitutional history finds himself compelled to plunge more deeply into law than his predecessors have gone, when every effort after economic history is demonstrating the absolute necessity for a preliminary solution of legal problems, when two great English historians who could agree about nothing else have agreed that English history must be read in the Statute Book?[1] In course of time the amendment will be

[1] *Contemporary Review*, vol. xxxi (1877–78), p. 824, Mr. Freeman on Mr. Froude.

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adopted that to the Statute Book be added the Law Reports, the Court Rolls and some other little matters.

And then again we ought by this time to have learnt the lesson that the history of our law is no unique phenomenon. For a moment it may crush some hopes of speedy triumph when we learn that, for the sake of English law, foreign law must be studied, that only by a comparison of our law with her sisters will some of the most remarkable traits of the former be adequately understood. But new and robuster hopes will spring up; we have not to deal with anything so incapable of description as a really unique system would be. At numberless points our mediæval law, not merely the law of the very oldest times but also the law of our Year Books, can be illustrated by the contemporary law of France and Germany. The illustration, it is true, is sometimes of the kind that is produced by flat contradiction, teaching us what a thing is by showing us what it is not; but much more often it is of a still more instructive kind, showing us an essential unity of substance beneath a startling difference of form. And the mighty, the splendid efforts that have been spent upon reconstructing the law of mediæval Germany will stimulate hopes and will provide models. We can see how a system has been recovered from the dead; how by means of hard labor and vigorous controversy one outline after another has been secured. In some respects the work was harder than that which has to be done for England, in some perhaps it was easier; but the sight of it will prevent our saying that the history of English law will never be written.

And a great deal has been done. It is true that as yet we have not any history of our whole law that can be called adequate, or nearly adequate. But such a work will only come late in the day, and there are many things to be done before it will be produced. Still some efforts after general legal history have been made. No man of his age was better qualified or better equipped for the task than Sir Matthew Hale; none had a wider or deeper knowledge of the materials; he was perhaps the last great English lawyer who habitually studied records;

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he studied them pen in hand and to good purpose. Add to this that, besides being the most eminent lawyer and judge of his time, he was a student of general history, found relaxation in the pages of Hoveden and Matthew Paris, read Roman law, did not despise continental literature, felt an impulse towards scientific arrangement, took wide and liberal views of the object and method of law. Still it is by his *Pleas of the Crown* and his *Jurisdiction of the House of Lords* that he will have helped his successors rather than by his posthumous and fragmentary *History of the Common Law*.[1] Unfortunately he was induced to spend his strength upon problems which in his day could not permanently be solved, such as the relation of English to Norman law, and the vexed question of the Scottish homage; and just when one expects the book to become interesting, it finishes off with protracted panegyrics upon our law of inheritance and trial by jury. When, nearly a century later, John Reeves[2] brought to the same task powers which certainly were far inferior to Hale's, he nevertheless achieved a much more valuable result. Until it is superseded, his *History* will remain a most useful book, and it will assuredly help in the making of the work which supersedes it. Reeves had studied the Year Books patiently, and his exposition of such part of our legal history as lies in them is intelligent and trustworthy; it is greatly to his credit that, writing in a very dark age (when the study of records in manuscript had ceased and the publication of records had not yet begun), he had the courage to combat some venerable or at least inveterate fables. Still his work is very technical and, it must be confessed, very dull; it is only a book for those who already know a good deal about mediæval law; no attempt is made to show the real, practical meaning of ancient rules, which are left to look like so many arbitrary canons of a game of chance; owing to its dreariness it is never likely to receive its fair share of praise. Crabb's *History of English Law* is a com-

[1] The History of the Common Law of England, written by a learned hand (1713). There are many later editions.

[2] History of the English Law (4 vols., 1783–87). Originally the work was brought down to the end of Mary's reign; in 1814 a fifth volume dealing with Elizabeth's reign was added. An edition published in 1869 cannot be recommended.

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paratively slight performance;[1] it adds little if anything to what was done by Reeves.

But particular departments of law have found their historians. What we call constitutional history is the history of a department of law and of something more — a history of constitutional law and of its actual working. For men of English race, constitutional history has long had an interest; they can be stirred by the politics of the past, for they are "political animals" with a witness. It would be needless to say that in this quarter solid and secure results have been obtained, needless to mention the names of Palgrave, Hallam, Stubbs, Gneist. Still, for modern times, much remains to be done. In relation to those times "constitutional history" but too frequently means a history of just the showy side of the constitution, the great disputes and great catastrophes, matters about which no one can form a really sound opinion who is not thoroughly versed in the sober, humdrum legal history of the time. But this work will certainly be done; the "general historian" will see more and more clearly after every attempt that he cannot be fair, that he cannot even be very interesting, unless he succeeds in reproducing for us not merely the facts but the atmosphere of the past, an atmosphere charged with law.

Again, other parts of the law have been submitted to historical treatment; in particular, those which in early times were most closely interwoven with the law of the constitution, criminal law[2] and real property law,[3] while the history of trial by jury has a literature of its own and the history of some early stages

[1] George Crabb, A History of English Law (1829). George Spence, in the first volume of his Equitable Jurisdiction of the Court of Chancery (2 vols., 1846), has given a learned and valuable account of the development of the common law, perhaps the best yet given. In 1882–83, Ernest Glasson published his Histoire du Droit et des Institutions de l'Angleterre; but this does not go very far below the surface. Heinrich Brunner in Holtzendorff's Encyklopädie has published a most useful sketch of the French, Norman and English materials for legal history; the part relating to England has been translated into English by W. Hastie (Edinburgh, 1888); this translation I have not seen.

[2] James Fitzjames Stephen, History of the Criminal Law (3 vols., 1883); Luke Owen Pike, History of Crime (2 vols., 1873).

[3] Kenelm Edward Digby, Introduction to the History of the Law of Real Property (1875).

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in the development of civil procedure has not been neglected.[1] But every effort has shown the necessity of going deeper and deeper. Everywhere the investigator finds himself compelled to deal with ideas which are not the ideas of modern times. These he has painfully to reconstruct, and he cannot do so without calling in question much of the traditional learning, without tracing the subtle methods in which legal notions expand, contract, take in a new content, or, as is sometimes the case, become hide-bound, wither and die. This task of probing and defining the great formative ideas of law is one that cannot be undertaken until much else has been done; it is only of late that the possibility and the necessity of such a task have become apparent, but already progress has been made in it. We are not where we were when a few years ago Holmes published a book which for a long time to come will leave its mark wide and deep on all the best thoughts of Americans and Englishmen about the history of their common law.[2]

And here let us call to mind the vast work done by our Record commission, by the Rolls series, by divers antiquarian societies, towards providing the historian of law with new materials. Let us think what Reeves had at his disposal, what we have at our disposal. He had the Statute Book, the Year Books in a bad and clumsy edition, the old text-books in bad and clumsy editions. He made no use of Domesday Book; he had not the *Placitorum Abbreviatio*, nor Palgrave's *Rotuli Curiae Regis;* he had no Parliament Rolls, Pipe, Patent, Close, Fine, Charter, Hundred Rolls, no Proceedings of the King's Council, no early Chancery Proceedings, not a cartulary, not a manorial extent, not a manorial roll; he had not Nichols' Britton, nor Pike's nor Horwood's Year Books, nor Stubbs' Select Charters, nor Bigelow's *Placita Anglo-Normannica;* he had no

[1] Melville Madison Bigelow, History of Procedure in England (1880).

[2] O. W. Holmes, Jr., The Common Law (1882). The History of Assumpsit, by J. B. Ames (*Harvard Law Review*, April, May, 1888), is a masterly dissertation on some of the central ideas. In many articles in magazines, American and English, one may see a freer and therefore truer handling of particular themes of legal history than would have been possible twenty years ago; and the best text writers, though their purpose is primarily dogmatical, have felt the necessity of testing such history as they have to introduce instead of simply copying what Coke or Blackstone said.

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collection of Anglo-Saxon "land books," only a very faulty collection of Anglo-Saxon dooms, while the early history of law in Normandy was utter darkness. The easily accessible materials for that part of our history which lies before Edward I have been multiplied tenfold, perhaps twenty-fold; even as to later periods our information has been very largely supplemented. Where Reeves was only able to state a naked rule, taken from Bracton or the Statute Book, and leave it looking bare and silly enough, we might clothe that rule with a score of illustrations which would show its real meaning and operation. The great years of the Record commission, 1830 to 1840, the years when Palgrave and Hardy issued roll after roll, such years we shall hardly see again; the bill, one is told, was heavy; but happily the work was done, and there it is.[1] A curious memorial it may seem of the age of "the radical reform," of the time when Parliament, for once in a way, was really showing some interest in the ordinary, every-day law of the realm, and was wisely freeing it from its mediæval forms. But in truth there is nothing strange in the coincidence; the desire to reform the law went hand in hand with the desire to know its history; and so it has always been and will always be.[2] The commencement in 1858 of the Rolls series is, of course, one of the greatest events in the history of English history, and in that series are now to be found not only most of our principal chronicles, but also several books of first-rate legal importance, Year Books never before printed and monastic cartularies. The English Historical society published Kemble's collection of Anglo-Saxon charters, the Camden society published Hale's Domesday of St. Paul's and several similar works. More recently the Pipe Roll society started with the purpose of "dealing with all national manuscripts of a date prior to 1200," and the Selden society

[1] Yes, but by no means all of it is in print. The nation was attacked with one of its periodical fits of parsimony, and the consequence is that there exist volumes upon volumes of transcripts made by Palgrave or under his eye. Very possibly the commissioners were for a while extravagant, still it was hardly wise to stop a great work when the cost of transcription was already incurred. However, these transcripts will become useful some day.

[2] Some of the coincidences are very striking: thus "fines" were abolished in 1834; in 1835 the earliest fines were printed.

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with the purpose of "printing manuscripts and new editions and translations of books having an important bearing on English legal history." Such work must chiefly be done in the old country, but it would be base ingratitude were an Englishman to forget that the Selden society owes its very existence to the support that has been given to it in America. And then again the original documents themselves are now freely and conveniently accessible to the investigator, and a very great deal has been done towards making catalogues and indexes of them. Our Public Record office, if I may speak from some little experience of it, is an institution of which we may justly be proud; certainly it is a place in which even a beginner meets with courtesy and attention, and soon finds far more than he had ever hoped to find. Then, lastly, there has been a steady flow of manuscripts towards a few great public libraries. He who would use them has no longer to go about the country begging favors of the great; he will generally find what he wants at the British museum, at Oxford, or at Cambridge. No, most certainly we do not stand where Reeves stood.[1]

But perhaps we have not yet cast our eyes towards what will prove to be the brightest quarter of all, the study of our common law in the universities. Not only are there law schools, but (and this is more to our point) we on this side of the water have the pleasure of reading about schools of political science, schools in which law is taught along with history and along with political economy. Surely it cannot be very rash in us to say that the training there provided is just the training best calculated to excite an interest in the history of law. Possibly that interest may be sufficiently keen and sufficiently patient to tolerate the somewhat dreary information which it is the purpose of this article to afford. An attempt to indicate briefly the nature and the whereabouts of our materials may be of some use though it stops short of a formal bibliography. In the course of this

[1] To any one who proposes to investigate the English public records the following books will be of use: C. P. Cooper, An Account of the Public Records (2 vols., 1832); F. S. Thomas, Handbook to the Public Records (1853); Richard Sims, A Manual for the Genealogist (1856); Walter Rye, Records and Record Searching (1888). The Annual Reports of the Deputy Keeper of the Public Records are also very useful.

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attempt the writer may take occasion to point out not merely what has been done, but also what has not been done, and in this way he may perhaps earn the thanks of some one who is on the outlook for a task.

To break up the history of law into periods is of course necessary; but there must always be something arbitrary in such a proceeding, and only one who is a master of his matter will be in a position to say how the arbitrary element can best be brought to the irreducible minimum. It would be natural to make one period end with the Norman conquest; and though, if no line were drawn before that date, the first period would be enormously long, five or six hundred years, still we may doubt whether our English materials will ever enable us to present any picture of a system of English or Anglo-Saxon law as it was at any earlier date than the close of the eleventh century. By that time our dooms and land-books have become a considerable mass. If we stop short of that time, we shall have to eke out our scanty knowledge with inferences drawn from foreign documents, the *Germania* of Tacitus, the continental "folk laws," notably the *Lex Salica*. In that case the outcome will be much rather an account of German law in general than an account of that slip of German law which was planted in England: a very desirable introduction to a history of English law it may be, but hardly a part of that history. Passing by for a moment the deep question whether the English law of later times can be treated as a genuine development of Anglo-Saxon law, whether the historian would not be constrained to digress into the legal history of Scandinavia, Normandy, the Frankish Empire, we shall probably hold that the reigns of our Norman kings, including Stephen, make another good period. The reign of Henry II there might be good reason for treating by itself, so important is it. "From Glanvill to Bracton" might be no bad title, though there would be something to be said for pausing at the Great Charter. The reign of Edward I, "the English Justinian," has claims to be dealt with separately, or the traditional line drawn between the Old Statutes and the New might make us carry on the tale to the death of Edward II. "The period

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of the Year Books" — Edward II to Henry VIII — is, so far at least as private law is concerned, a wonderfully unbroken period. If a break were made in it, the accession of Edward IV, the beginning of "the new monarchy" as some call it, might be taken as the occasion of a halt. The names of Coke and Blackstone suggest other halting places. After the date of Blackstone, the historian, if an Englishman dealing solely with England, would hardly stop again until he reached some such date as 1830, the passing of the Reform acts, the death of Jeremy Bentham, the beginning of the modern period of legislative activity; if an American, he would draw a marked line at the Declaration of Independence, and it would be presumption in an Englishman to guess what he would do next. But on this occasion we shall not get beyond the end of the middle ages, and for the sake of brevity our periods will be made few.

I. *England before the Norman Conquest.*

The materials consist chiefly of (1) the laws, or "dooms," as they generally call themselves; (2) the "land books" and other diplomata; (3) the ecclesiastical documents, in particular canons and penitentials.

(1) We have first a group of very ancient Kentish laws, those of Ethelbert (*circa* 600), those of Hlothar and Eadric (*circa* 675), and those of Wihtred (696). A little earlier than these last come the dooms of the West-Saxon Ine (690). Then follows a sad gap, a gap of two centuries, for we get no more laws before those of Alfred; it is to be feared that we have lost some laws of the Mercian Offa. With the tenth century and the consolidation of the realm of England, legislation becomes a much commoner thing. Edward, Ethelstan, Edmund, Edgar issue important laws, and Ethelred issues many laws of a feeble, distracted kind. The series of dooms ends with the comprehensive code of Canute, one of the best legal monuments that the eleventh century has to show. Besides these laws properly so called, issued by King and Witan, our collections include a few documents which bear no legislative authority, namely, some statements of the *wergelds* of different orders of men, a few

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procedual formulas, the ritual of the ordeal, and the precious *Rectitudines Singularum Personarum*, a statement of the rights and duties of the various classes of persons to be found on a landed estate, a document the date of which is at present very indeterminate. Some further light on the law of the times before the conquest is thrown by certain compilations made after the conquest, of which hereafter; to wit, the so-called *Leges* of the Confessor, the Conqueror, and Henry I. With scarce an exception these dooms and other documents are written in Anglo-Saxon. An ancient Latin version [*vetus versio*] of many of them has been preserved, and testifies to the rapidity with which they became unintelligible after the conquest.[1]

The dooms are far from giving us a complete statement of the law. With possibly a few exceptions there seems to have been no attempt to put the general law in writing; rather the King and the Wise add new provisions to the already existing law or define a few points in it which are of special importance to the state. Hence we learn little of private law, and what we learn is implied rather than expressed; to get the peace kept is the main care of the rulers; thus we obtain long tariffs of the payments by which offences can be expiated, very little as to land-holding, inheritance, testament, contract, or the like. We have no document which purports to be the *Lex* of the English

[1] Some of the dooms, forgotten for many centuries, were printed by William Lambard in his Archaionomia (1568). An improved and enlarged edition of this book was published by Abraham Whelock (Cambridge, 1644). A yet ampler collection was issued in 1721 by David Wilkins, Leges Anglo-Saxonicae Ecclesiasticae et Civiles. In 1840 these works were superseded by that of Richard Price and Benjamin Thorpe, Ancient Laws and Institutes of England, published for the Record commissioners both in folio and in octavo; the second volume contains ecclesiastical documents; a translation of the Anglo-Saxon text is given. Meanwhile Reinhold Schmid, then of Jena and afterwards of Bern, had published the first part of a new edition, Die Gesetze der Angelsachsen, Erster Theil. In 1858, having the commissioners' work before him, instead of finishing his original book he published what is now the standing edition of all the dooms, Die Gesetze der Angelsachsen (Leipzig, 1858), an excellent edition equipped with a German translation of the Anglo-Saxon text and a glossary which amounts to a digest. Yet another edition has for some time been promised by F. Liebermann. The manuscripts are so numerous and in some cases so modern and corrupt, and the study of the Anglo-Saxon tongue and of the foreign documents parallel to our dooms is making such rapid progress, that in all probability no edition published for some time to come will be final.

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folk, or of any of the tribes absorbed therein; we have nothing quite parallel to the *Lex Salica* or the *Lex Saxonum*. Again, we cannot show for this period any remains of scientific or professional work, and we have no reason to suppose that any one before the conquest ever thought of writing a text-book of law.

(2) The diplomata of this age consist chiefly of grants of land ("land books"), for the more part royal grants, together with a comparatively small number of wills. The charters of grant are generally in Latin, save that the description of the boundaries of the land is often in English; the wills are usually in English. The latest collection of them will contain between two and three thousand documents.[1] If all were genuine, about one hundred of them should come from the seventh century, and about two hundred from the eighth; of course, however, many of them are not genuine, or but partially genuine, and perhaps the history of law presents no more difficult problem than that of drawing just inferences from documents which have either been tampered with or very carelessly copied. Invaluable as these instruments are, the use hitherto made of them for the purpose of purely legal history is somewhat disappointing. The terms in which rights are transferred are singularly vague and the amount of private law that can be got out of them is small. However they have only been accessible for some forty years past and their jural side[2] has not yet been very thoroughly dis-

[1] The standing collection is (or until lately was) the great work of John Mitchell Kemble, Codex Diplomaticus Aevi Saxonici (6 vols., 1839–48), published for the English Historical society, with excellent introductions, a work not now easily to be bought. Kemble marks with an asterisk the documents that he does not accept as genuine. Benjamin Thorpe's Diplomatarium Aevi Saxonici (1865), is a small collection of much less importance. Walter de Gray Birch, under the title Cartularium Saxonicum, is publishing a collection which will contain all Kemble's documents and more also and which will be based on a new examination of the MSS.; two volumes of this work are already completed. John Earle's Handbook to the Land Charters and other Saxonic Documents (1888), is a most useful work, containing many typical charters which are critically discussed chiefly from the standpoints of philology and the diplomatic art. For close study the following are invaluable: Bond's Facsimiles of Ancient Charters in the British Museum (4 vols., 1873–78; photographs of about 120 documents), and the photozincographed Facsimiles of Anglo-Saxon Manuscripts, edited by W. Basevi Sanders, 3 vols.

[2] Some of the legal points in these documents are discussed by Brunner, Zur Rechtsgeschichte der römischen und germanischen Urkunde (1880). Kemble's introductions are still of the highest value.

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cussed. A few of the land books contain incidental accounts of litigation, but for the oldest official records of lawsuits we must look to a much later age.

(3). Besides these we have ecclesiastical documents, canons and penitentials[1] which must not be neglected. During this period it is impossible to draw a very sharp line between the law of the church and the law of the realm. It is highly probable again that the penitential literature had an important influence on the development of jurisprudence, and it often throws light on legal problems, for instance the treatment of slaves.

Materials being scanty, all that is said by the chroniclers and historians of the time and even by those of the next age will have to be carefully weighed; use must be made of Beda's works and of the Anglo-Saxon Chronicle. But the time had not yet come when annalists would incorporate legal documents in their books or give accurate accounts of litigation.

For the continental history of this same period there are two classes of documents which are of great service, but the like of which England cannot show: namely, formularies, that is, in our modern language, "precedents in conveyancing," and estate registers, that is, descriptions of the manors of great landowners showing the names of the tenants and the nature of their services. We have, as it seems, nothing to set beside the *Formulae Marculfi* or the *Polyptyque* of the Abbot Irmino. The practice of conveying land by written instrument seems never to have worked itself thoroughly into the English folk-law, and the religious houses and other donees of "book-land" seem to have been allowed to draw up their own books pretty much

[1] The classical collection of the Councils has been David Wilkins, Concilia (1737, 4 vols). The first volume goes far beyond the end of this period, goes as far as 1265. For the time before 870 this is superseded by vol. iii of Councils and Ecclesiastical Documents relating to Great Britain and Ireland, by Arthur West Haddan and William Stubbs (Oxford, 1869–73); a yet unfinished work, the first volume of which refers to the British, Cornish, Welsh, Irish and Scottish churches. This collection contains, besides the Councils, many other ecclesiastical documents and what seems to be the best part of the penitential literature. Canons and penitentials are also to be found in vol. ii of the Ancient Laws and Institutes, but it is said that they were not very discriminately edited. The history of penitentials seems to be an intricately tangled skein.

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according to their taste, a taste inclining towards pompous verbosity rather than juristic elegance. Still, it is possible that a very careful comparison of the most genuine books would lay bare the formulas on which they were constructed and show a connection between those formulas and the continental precedents. That we should have no manorial registers or "extents" from this period is much to be regretted; it suggests the inference, very probable for other reasons, that the manorial system formed itself much more rapidly in France than in England.

That we shall ever be able to reconstruct on a firm foundation a complete system of Anglo-Saxon law, of the law of the Confessor's day, to say nothing of Alfred's day or Ethelred's, may well be doubted; the materials are too scanty. The "dooms" are chiefly concerned with keeping the peace; the "land books," considering their number and their length, tell us wonderfully little, so vague, so untechnical, is their wording. Still the most sceptical will not deny that within the present century a great deal of knowledge has been secured, especially about what we may call the public law of the time. And here of course it is important to observe that the old English law is no unique system; it is a slip of German law. This makes permissible a circumspect use of foreign materials, and it should be needless to say that during the last fifty years these have been the subject of scientific research which has achieved very excellent results. The great scholars who have done that work have not neglected our English dooms; these indeed have proved themselves invaluable in many a controversy. The fact that they are written, with hardly an exception, in the native tongue of the people, whereas from the first the continental lawgiver speaks in Latin; the fact that they are almost absolutely free from any taint of Roman law; the fact that their golden age begins with the tenth century, when on the continent the voice of law has become silent and the state for a while seems dissolved in feudal anarchy, — these facts have given our dooms a high value in the eyes even of those whose primary concern was less for England than for Germany or France. There is good reason then to hope that the main outlines of the development

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even of private law will be drawn, although we may not aspire to that sort of knowledge which would have enabled us to plead a cause in an Anglo-Saxon hundred moot.

How much law there was common to all England, or common to all Englishmen, is one of the dark questions. After the Norman conquest we find a prevailing opinion that England is divided between three great laws, West-Saxon, Mercian, Danish, three territorial laws as it would seem. On the surface of the documents the differences between these three laws seem rather a matter of words than a matter of substance; but neither by this nor by the universality of the later "common law" are we justified in setting aside a theory which writers of the eleventh and twelfth centuries regarded as of great importance. In earlier times the various laws would be tribal rather than territorial; but we have little evidence that the Kenting could carry with him his Kentish law into Mercia in the same way that the Frank or Bavarian could preserve his national law in Lombardy; the fact that there was not in England any race or class of men "living Roman law," may have prevented the development of that system of "personal laws" which is a remarkable feature in the history of the continent. There is much evidence, however, that in the twelfth century local customs were many and important. The difficulty of reconstructing these will always be very great unless some new materials be found; still, work on Domesday Book and on the later manorial documents may succeed in disclosing some valuable distinctions.

In noticing what has been done already, it should be needless to mention Kemble's *Saxons in England* or his introductions to the various volumes of the *Codex Diplomaticus*. It will be more to the point to mention with regret that Konrad Maurer's *Angelsächsische Rechtsverhältnisse* is to be found only in the back numbers (volumes i, ii, iii) of the *Kritische Ueberschau* published in Munich. The *Essays in Anglo-Saxon Law* (Boston, 1876), by Adams, Lodge, Young, and Laughlin, should be well known in America. The public law is dealt with in the constitutional histories of Palgrave, Gneist, Stubbs; also by Freeman, in the first volume of his *Norman Conquest*. To

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name the books of foreign writers in which Anglo-Saxon law has been touched incidentally would be to give something like a catalogue of the labors of the "Germanists." The influence of the Danes in the development of English law has until recent years been too much neglected. It is the subject of an elaborate work by Johannes C. H. R. Steenstrup, *Danelag* (Copenhagen, 1882). This constitutes the fourth volume of the *Normannerne* (1876–82).

II. *Norman Law.*

If the history of the law which prevailed in England from 1066 to, let us say, 1200 is to be written, the history of the law which prevailed in Normandy before 1066 will have to be studied. Such study will always be a very difficult task, because, unless some great discovery remains to be made, it will be the reconstruction of law which has left no contemporary memorials of itself. We have at present hardly anything that can be called direct evidence of the legal condition of Normandy between the time when it ceased to be a part of the West-Frankish realm and a date long subsequent to the conquest of England. It is only about the middle of the twelfth century that we begin to get documents, and even then they come sparsely. What then we shall know about the period in question will be learnt by way of inferences, drawn partly from the time when Normandy was still a part of Neustria, when its written law consisted of the *Lex Salica* and the capitularies; partly from the Normandy of Henry II's reign and yet later times; partly again from what we find in England after the Norman conquest. Much will always remain very dark, and there is reason to fear that a perverted patriotism will give one bias to English, another to continental writers — an American might surely afford to be strictly impartial. But enough has happened of late years to show that if historians will go deeply enough into legal problems a substantial accord may be established between them. The extreme opinions are the superficial opinions, and they are falling into discredit. The doctrines of Stubbs, Gneist and Brunner have a great deal in common. It

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is impossible now to maintain that William just swept away English in favor of Norman law. It is quite undeniable that new ideas and new institutions of far-reaching importance "came in with the Conqueror." Hale made a good remark when he said:

> It is almost an impossible piece of chymistry to reduce every *Caput Legis* to its true original, as to say, this is a piece of the Danish, this is of the Norman, or this is of the Saxon or British law.

But even the chemical metaphor is inadequate, for the operation of law on law is far subtler than any process that the world of matter has to show. It is not that English law is swept away by any decree to make room for Norman law; it is much rather that ideas and institutions which come from Normandy slowly but surely transfigure the whole body of English law, especially English private law. Much evidently remains to be done for Norman law, much that will hardly be done by an Englishman; but already of late years a great deal has been gained, and the student of Glanvill must have the coæval *Très ancien Coutumier* constantly in his hand.

In three very accessible places Heinrich Brunner has sketched the history of law in Normandy: (1) *Das anglonormannische Erbfolgesystem* (Leipzig, 1869); (2) *Die Entstehung der Schwurgerichte* (Berlin, 1871); (3) *Ueberblick über die Geschichte der französischen, normannischen und englischen Rechtsquellen*, in Holtzendorff's *Encyclopädie der Rechtswissenschaft* (1882), page 297. In his view, Norman law is Frankish: Frankish institutions take out a new lease of life in Normandy, when they are falling into decay in other parts of the quondam Frankish Empire.

The chief materials[1] for Norman legal history are:

(1) *Exchequer Rolls.* We possess, in whole or in part, rolls for the years 1180, 1184, 1195, 1198, 1201–03.[2] They answer to the English Pipe Rolls.

[1] In the following remarks I rely partly upon Brunner, partly upon Ernest Joseph Tardif, who is engaged upon editing the Norman Coutumiers.

[2] Thomas Stapleton, Magni Rotuli Scaccarii Normanniae (2 vols., 1840–44). A fragment of the roll of 1184 was published by Leopold Delisle, Magni Rotuli Scaccarii Normanniae Fragmentum (Caen, 1851).

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(2) *Collections of judgments.* We have several private collections of judgments of the Exchequer in the thirteenth century, beginning in 1207,[1] drawn from official records not now forthcoming.

(3) *Law books.* We have to distinguish:

(i) A compilation, of which both Latin and French versions exist, known as *Statuta et Consuetudines Normanniae*, or *Établissements et Coutumes de Normandie*;[2] but this compilation proves to be composed of two different works: (*a*) a treatise which Brunner gives to the last years of the twelfth or the first years of the thirteenth century, and which Tardif dates in 1199 or 1200; and (*b*) a later treatise compiled a little after 1218 according to Brunner, about 1220 according to Tardif.

(ii) Then comes the *Grand Coutumier de Normandie.* The Latin version of this, which is older than the French, calls itself *Summa de Legibus Consuetudinum Normanniae*, or *Summa de Legibus in Curia Laicali*, and was composed before 1280 and probably between 1270 and 1275.[3]

There are a few later law-books of minor importance.

(4) *Diplomata.* Normandy is poor in diplomata of early date and, according to Brunner, many of those that exist are still unprinted; but in the *Collection de Documents Inédits* is a small but ancient (1030–91) *Cartulaire de la Sainte Trinité du Mont de Rouen*, edited by Deville in 1841; Leopold Delisle has published a *Cartulaire Normand de Philippe Auguste, Louis VIII, Saint Louis, et Philippe le Hardi* (Caen, 1852); and there exists

[1] These are most accessible in Leopold Victor Delisle's Recueil de Jugements de l'Exchiquier de Normandie au XIII^e siècle (Paris, 1864). A collection of judgments delivered in the "Assises" between 1234 and 1237 (Assisiae Normanniae) will be found in Warnkönig's Französische Staats- und Rechtsgeschichte, vol. ii, pp. 48–64.

[2] The former has lately been edited by Tardif under the title, Le très ancien Coutumier de Normandie (Rouen, 1881); the latter may be found in A. J. Marnier's Établissements et Coutumes, Assises et Arrêts de l'Exchiquier de Normandie (Paris, 1839).

[3] This was first printed in 1483; there have been many subsequent editions. The Latin text can be found in Johann Peter Ludewig, Reliquiae Manuscriptorum (Frankfort and Leipzig), vol. vii; the French in Bourdot de Richebourg, Coutumier Général, vol. iv. For some time past a new edition of the Latin Summa by Tardif has been advertised as in the press. The authorship of the work has been discussed by Tardif in a pamphlet entitled Les Auteurs présumés du Grand Coutumier de Normandie (Paris, 1885).

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in the English Record office a manuscript collection made by Léchaudé d'Anisy, entitled *Cartulaire de la Basse Normandie, from various Norman Archives.*[1]

III. *From the Norman Conquest* (1066) *to Glanvill* (*circa* 1188) *and the Beginning of Legal Memory* (1189).

We may classify the materials thus: (1) laws; (2) private collections of laws and legal text-books; (3) work done on Roman and Canon law; (4) diplomata; (5) Domesday Book, surveys, public accounts, *etc.*; (6) records of litigation.

(1) *Laws.* It is, as we shall see, a little difficult to draw the line between the first two classes of documents. No one of the Norman Kings was a great legislator; but we have one short set of laws which may in the main be considered as the work of the Conqueror; besides these we have his ordinance separating the ecclesiastical from the temporal courts and another ordinance touching trial by battle. Henry I's coronation charter (1100) is of great value, and Stephen's second charter (1136) is of some value. Henry II was a legislator; we have from his day the Constitutions of Clarendon (1164), the Assize of Clarendon (1166), the Assize of Northampton (1176), the Assize of Arms (1181) and the Assize of the Forest (1184); but we have reason to fear that we have lost ordinances of the greatest importance, in particular the Grand Assize and the Assize of Novel Disseisin, two ordinances which had momentous results in the history of private and even of public law.

(2) *Private collections of laws and legal text-books.* Our first class of documents shades off into the second class by the intermediation of the so-called *Leges Edwardi, Willelmi, Henrici Primi.* A repeated confirmation of the Confessor's law (*lagam* not *legem* or *leges Edwardi*) apparently led to several attempts at the reproduction of this "good old law." First we have an expanded version of the code of Canute (Schmid's

[1] From this and other sources, some very important documents are printed by way of appendix to M. M. Bigelow's History of Procedure (London, 1880); as to their date, see Brunner, *Zeitschrift der Savigny Stiftung*, ii, 202. Tardif, in his edition of the Très ancien Coutumier, p. 95, has given a list of unprinted cartularies.

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Pseudoleges Canuti); then we have the *Leges Edwardi Confessoris*, a document which professedly states the result of an inquiry for the old law made by the Conqueror in the fourth year after the conquest; but the purest version that we have alludes to the doings of William Rufus. Then we have a highly ornate and expanded version of the probably genuine laws of the Conqueror mentioned above: it looks like work of the thirteenth century. Then there is another set of laws attributed to the Conqueror, which as it appears both in French and Latin may be conveniently called "the bilingual code"; its author made great use of the laws of Canute; its history is in some degree implicated with the forgery of the false Ingulf. These various documents demand a more thorough criticism than any to which they have as yet been subjected.[1] Of much greater importance is the text-book known as the *Leges Henrici Primi*. Until lately it was usual to give this work to the reign of Stephen or even of Henry II, on the ground that the author had used the *Decretum Gratiani;* but his last critic, Liebermann, says that this is not so, and dates the work between 1108 and 1118; this earlier date seems for several reasons the more acceptable.[2] The writer has made a large use of the Anglo-Saxon laws, which in general he treats

[1] The "Leges" will be found in the Record Commissioners' Ancient Laws, and in Schmid's Gesetze. The best version of the Conqueror's ordinances, together with the charters of Henry I and Stephen and the various assizes of Henry II, is in Stubbs's Select Charters, which book now becomes indispensable. An earlier collection of the laws of this age, which is still useful, is Henry Spelman's Codex Legum Veterum, published from Spelman's posthumous papers by David Wilkins in his Leges Anglo-Saxonicae. Some points about the "Leges" are discussed by Stubbs in the Introduction to vol. ii of his edition of Roger Hoveden (Rolls series) and by Freeman in his Norman Conquest, vol. v, app. note kk.

[2] Liebermann's article on the date of the Leges Henrici is in *Forschungen zur deutschen Geschichte*, Bd. xvi; his book on the Dialogus de Scaccario, mentioned below, has some critical remarks on the Leges Edwardi. The lost legislation of Henry II may be partially reconstructed by means of Glanvill and Bracton. There is yet room for a great deal of work on the assizes and "leges." We have reason to believe that there once existed an important law book of Henry I's day, but it is not now forthcoming; what is known about it will be found in Cooper's Account of the Public Records (1832), ii, 412. For the strange history of "the bilingual code" reference should be made to the famous article in the *Quarterly Review*, No. 67 (June, 1826), p. 248, in which Palgrave exposed the Ingulfine forgery, and two articles by Riley in the *Archæological Journal* (1862), vol. xix.

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as still in force, but on occasion he stops gaps with extracts from the *Lex Salica*, *Lex Ripuaria*, the Frankish capitularies and some collections of canons; he has one passage which comes by a round-about way from Roman law; it is taken from an epitome of the Breviary of Alaric. Altogether he gives us a striking picture of an ancient system of law in course of dissolution and transformation; a great deal might yet be done for his text, which in places is singularly obscure.

The end of Henry II's reign is marked by the *Tractatus de Legibus et Consuetudinibus Angliae*,[1] usually, though on no very conclusive evidence, attributed to Ranulf Glanvill, who became chief justiciar in 1180, and died a crusader at the siege of Acre in 1190. This book, always referred to as "Glanvill," was apparently written at the very end of Henry's reign, and was not finished until after 1187. It is the first of our legal classics, and its orderly, practical brevity contrasts strongly with the diffuse, chaotic, antiquarian *Leges Henrici*. This is due in part to the fact that the author deals only with the doings of the King's Court, which is now beginning to make itself a tribunal of first instance for all England at the expense of the communal and seigniorial courts, partly also to the fact that he knew some Roman law and made good use of his knowledge in the arrangement of his matter. The great outlines of our land law have now taken shape, and many of the "forms of action" are already established.

The *Dialogus de Scaccario*, written, as is supposed, by Richard Fitz Neal, bishop of London, between 1178 and the end of Henry II's reign, is hardly a "law book," but is an excellent and valuable little treatise on the practice of the Exchequer and the whole fiscal system, the work of one very familiar with his

[1] The treatise was printed by Tottel without date about 1554; later editions were published in 1604, 1673, 1780; an English translation by Beames in 1812. It will be found also in the official edition of Acts of Parliament of Scotland, vol. i, where it is collated with the Scottish law book Regiam Majestatem. It will also be found in David Houard's Traités sur les Coutumes Anglo-Normandes (1776), and in Georg Phillips' Englische Reichs- und Rechtsgeschichte (1827–28). An ancient French translation of it, not yet printed, exists in Mus. Brit. MS. Lands, 467. A new edition in the Rolls series by Travers Twiss is advertised. The evidence as to Glanvill's authorship will be briefly canvassed in the Dictionary of National Biography, *s.v.* Glanvill.

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subject. This book, written by an administrator rather for the benefit of the intelligent public than for the use of legal practitioners, stands alone in our mediæval literature and must be invaluable to the historian of public law.[1]

(3) *Work upon Roman and Canon law.* In dealing with any century later than the thirteenth, the historian of English law could afford to be silent about Roman and Canon law, for, though these were studied and practised in England, and in particular many of the ordinary affairs of life, testamentary and matrimonial cases, were governed solely by the Canon law, still these laws appear in a strictly subordinate position, are administered by special courts, and exercise very little, if any, influence on the common law of England. But a really adequate treatment of the period which lies between the Norman conquest and the accession of Edward I would require some knowledge of Roman law and its mediæval history, also some knowledge of the earlier stages in the development of Canon law. Lanfranc, the right-hand man of the Conqueror, was trained in the Pavian law school, where Roman doctrines were already leavening the mass of ancient Lombard law; his subtle arguments were long remembered in Pavia. The influence of the Lombard school on Norman and English law is a theme worthy of discussion.[2] Then in Stephen's reign, as is well known, Vacarius[3] lectured in England on Roman law; it has even been conjectured that the

[1] The Dialogue, which was at one time cited as the work of "Gervasius Tilburiensis," was appended by Thomas Madox to his beautiful History of the Exchequer (1st ed. in one vol., 1711; 2d ed. in two vols., 1769), one of the greatest historical works of the last century. It will also be found in the Select Charters. It is the subject of an essay by Felix Liebermann, Einleitung in den Dialogus de Scaccario (Göttingen, 1875).

[2] Lanfranc's juristic exploits are chronicled in the Liber Papiensis, Monumenta Germaniae, Leges, iv, pp. xcvi, 402, 404, 566. It is not absolutely certain that this Lanfranc is our Lanfranc. The Pavian law school, which was engaged in reducing the ancient Leges Longobardorum, a body of law very similar to our Anglo-Saxon dooms, into rational order, would have afforded an excellent training for the future minister of the Norman Conqueror; and the close resemblance of some of our writs and pleadings to the Lombard formulas has before now been remarked.

[3] Carl Friedrich Christian Wenck, Magister Vacarius (Leipzig, 1820), gives an elaborate account of Vacarius's work (the title of which was Liber ex universo enucleato jure exceptus et pauperibus praesertim destinatus), together with many passages from it. One of the few MSS. is in the library of Worcester Cathedral.

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youth who was to be Henry II sat at his feet.[1] Vacarius wrote a book of Roman law, designed for the use of poor scholars, a book that is extant, a book that surely ought to be in print. His school did not perish, his scholars glossed his work. There are extant, again, several books of practice of the twelfth century and the first years of the thirteenth, which good critics believe to have been written either in Normandy or in England. Among them is one that has been ascribed to William of Longchamp, who became chief justiciar of England. In many quarters there are signs that an acquaintance with Roman law was not uncommon among cultivated men. Glanvill's work was influenced, Bracton's work profoundly influenced, by Roman law. Some of Henry II's most important reforms, in particular the institution of definitely possessory actions, may be traced directly or indirectly to the working of the same influence. The part played by Roman and Canon law in this critical stage of the formation of the common law deserves a minuter examination than it has as yet received.[2]

F. W. MAITLAND.

[1] Stubbs, Lectures on Mediæval and Modern History, p. 303.

[2] As a starting-point the investigator might take Savigny, Geschichte des römischen Rechts im Mittelalter, Kap. 36, and E. Caillemer, Le Droit Civil dans les Provinces Anglo-Normandes, Mémoires de l'Académie Nationale de Caen (1883), p. 157. Caillemer gives what remains of the treatise of William Longchamp, and will put a student on the track of what is known about "Pseudo-Ulpianus," Ricardus Anglicus, who is identified with Richard le Poor, bishop of Salisbury and Durham, and William of Drogheda. The lectures of Stubbs on the history of Canon law in England, Lectures on Mediæval and Modern History (1886), Lects. 13, 14, are of great interest. The old learning as to the history of Roman law in England is found in Selden's Dissertation suffixed to Fleta (more of this below); see also Thomas Edward Scrutton, The Influence of Roman Law on the Law of England (Cambridge, 1885).

[*Conclusion in following number.*]

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REVIEWS.

The Diary and Letters of Gouverneur Morris. Edited by ANNE CARY MORRIS. New York, Scribner's Sons, 1888. — Two vols. 8vo, 604, 630 pp.

The marked revival of interest in American history is bringing before the public many treasures, the existence of which in manuscript has long been known, but which have been jealously guarded by family pride or individual selfishness. To this class of publications these volumes of Morris belong; but rather in the group of *mémoires* than in that of serious historical records. Morris was prominent in the provincial politics of New York; he was active in the first years of the American revolution, and later served under Robert Morris as an executive officer of the Continental Congress. After the peace he went to France on commercial and financial business, still connected with Robert Morris; received a diplomatic appointment; was in France as American minister during the bloodiest years of the French revolution, and afterwards returned to America to again take part in its political concerns. This was a life of varied experience that to an observant and clever man would furnish an interesting story: and Morris was a man of considerable culture; a charming and fluent writer; fond of society and studious of social forms and elegances; able to turn a pretty phrase, compliment or verse when called for; a master of French; and as outspoken and frankly honest as the writer of a *mémoire* could well be. The result is two very readable volumes of diaries and letters, containing perhaps a little too much of the man (for his personal characteristics were very strong and seldom concealed) and too little of what would be of value in determining his position in the events of the time.

The strictly personal nature of the record explains its shortcomings. In France Morris reflected the passing gossip of the day, and chiefly the gossip of the *salon*, which Taine shows to have been so superficial and ignorant; his habits of thought were such that he could not penetrate beneath the surface indications and recognize any connection between the American and the French movements, any great underlying social forces that were working to similar ends. Hence his explanations of what had occurred, and his conjectures of the future, are more curious than valuable; and at times he recognizes this himself: "At present I weary myself with unavailing reflection, meditation, and conjecture."

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But it is of interest to see through American eyes the events of the great drama that was then enacting and the leading performers; and the reader is brought into closer relations with a certain part of French society in a manner that cannot be otherwise than agreeable, for the narrative is well sustained, piquant at times, and marked by not a few happy descriptions of character.

Passing over his French experiences and his travels on the continent of Europe, pleasantly told but of little novelty, we come to his return to America. Here a sense of disappointment is felt. Morris was a Federalist (though now by no means the ardent advocate that he was in the earlier years of the Revolution), and all his political affiliations were with that party. His intimacy with its leaders (and few states could claim so much ability or show so many fiercely contested political battles as New York) gave him an opportunity of knowing their purposes and the means used to accomplish their ends. Yet how meagrely he used his opportunities may be seen by turning to the letters covering the Burr-Jefferson contest, and the episode of Hamilton's death. No idea is gained from his records of the rapid downfall of the Federalists, nor of the rise of the Democrat or Jefferson party. That this omission could not have arisen from indifference is shown by his severe strictures on the Democratic leaders, and notably on Jefferson: "He is Utopia, quite," believing in the "perfectibility of man, the wisdom of mobs, and moderation of Jacobins"; he had "outlived his popularity, and is descending to a condition which I find no decent word to designate"; his folly was the "great evil under which America groans," and his policy was forcing the country into the path that led to monarchy, "which has ever been the termination of mob government"; while his party throve by "sacrificing permanent public interest to a fleeting popularity." Democracy represented to Morris "no government at all, but, in fact, the death or dissolution of other systems." It is not a little curious that the Federalists, counting among their ranks the intelligence and wealth of the country, were so blind to the large element of truth that gave such force to Jefferson's belief in the power of the people. If so masterly a mind as Hamilton's was befogged by aristocratic ideas of government, we can hardly look to Morris, an even greater believer in an aristocracy than was Hamilton, for a clearer perception of the drift of political power. He "abuses the other party," but there is no sentence in his writings, politician that he was, that discloses the most remote idea of the real fault of the Federalists, or of the expediency of appealing to the people, which Jefferson did in such a manner as to win for himself the name of demagogue.

During the contest between Burr and Jefferson, Morris indicated a preference for the former. Burr's defects, he thought, did not arise from

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a want of energy and vigor; he was courageous, might be generous, and could not be charged with ingratitude. Jefferson was infected with all the "cold-blooded vices," and what was of greater moment to a Northern man, he was regarded as a "slave of Virginia" — the state jealousies, engendered during the Revolution, not having subsided. A few years later, Morris concluded that Burr had little chance to be a leader of any party, though he had "considerable talents for government." There is not a word, however, to properly characterize the curious misapplication of political force that led the Federalists to attempt to place such a man as Burr in the presidential chair, although Morris believed them to be "moved by passion only," and agreed with Hamilton that Burr should not owe his election to Federalist votes. Morris's characterization of his friend and leader, Hamilton, (too long to be quoted here,) is very curious, and should be read by all interested in political history (II, 456, 474, 523). Gallatin is highly esteemed by Morris, who rightly describes him as "by much the strongest man" in Madison's cabinet.

We must insist that the personal interest of these volumes dominates the political or historical, and it is in recording social events that the writer appears at his best. This leads him to note bits of gossip that a deeper nature would have passed over as idle talk. A good example of this is his criticism on Madison's second inaugural:

> When I read it, I supposed him to be out of his senses, and have since been told that he never goes sober to bed. Whether intoxicated by opium or wine was not said, but I learned last winter that pains in his teeth had driven him to use the former too freely.

His portrait of Lafayette is not a pleasing one, and appears overdrawn, while Paine is treated most contemptuously — as in a measure he richly deserved. But it is a pleasure to read of his social and travelling experiences, told with vivacity and in happy language, indicating a good-natured and not over-fastidious man of the world; a character that did not recommend him to the sterner characters of the time — Richard Henry Lee, for example, speaking of him as a "mere flutterer on the surface." It is to be regretted that the more solid qualities of the man are not brought out more clearly, for a similar record of his experiences in the Provincial and Continental Congresses, and in the office of finance, would show him in a little different light. Still we are very thankful for this contribution, carefully and intelligently edited by his grand-daughter; and we are even more thankful to have Morris presented to us in a shape other than that of the stiff formality with which Sparks unfortunately clothed all his subjects.

WORTHINGTON C. FORD.

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The Beginnings of New England, or the Puritan Theocracy in its Relations to Civil and Religious Liberty. By JOHN FISKE. Boston and New York, Houghton, Mifflin & Co., 1889. — xvii, 296 pp.

The Critical Period of American History, 1783–1789. By JOHN FISKE. *Ibid.* 1888. — xviii, 365 pp.

Neither of these volumes, as the author takes pains to state, is a formal history of the period of which it treats. They are made up of certain of the historical lectures by which Professor Fiske has recently achieved great popularity.

The Beginnings of New England are considered in six chapters, namely: "The Roman and the English Idea," "The Puritan Exodus," "The Planting of New England," "The New England Confederacy," "King Philip's War," and "The Tyranny of Andros." As Professor Fiske's studies of New England Puritanism avowedly shun historical *minutiæ* and undertake to group ideas and characterize certain phases of civilization, he is not at all hampered by his subject. Palfrey, Bancroft, Doyle and Ellis have written more satisfactorily of all or a part of New England Puritanism, but none of them has put together the leading facts in such interesting and philosophical brevity as is done in this book. In Professor Fiske's descriptions we see the Puritan as a logical but very superstitious being. No mistake is more common than to call the Puritans illogical because they denied to others the freedom of thought which they demanded for themselves; but our author emphasizes the fact that religious liberty, as we understand it, was never contemplated by the Puritans. Their original intentions were even more different from the doctrines of Roger Williams than were their practices from his. The Puritan was so blind and ardent a believer in a special providence that almost every historian has either caught something of his delusion or else has failed to fully appreciate the spirit of the times. But Professor Fiske both praises and criticizes with such perfect reason that neither our prejudice nor our enthusiasm is wrought upon: we seem to *know* the Puritan as we know the good and bad qualities of our most intimate friends.

This very remarkable judicial faculty, joined with almost dramatic expression, is shown in some of his characterizations of individuals. Let us take a few sentences from that of Calvin:

> Among all the great benefactors of mankind the figure of Calvin is perhaps the least attractive. He was, so to speak, the constitutional lawyer of the Reformation, with vision as clear, with head as cool, with soul as dry, as any old solicitor in rusty black that ever dwelt in chambers in Lincoln's Inn. His sternness was that of the judge who dooms a criminal to the gallows. His theology had much in it that is in striking harmony with modern scien-

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tific philosophy, and much in it, too, that the descendants of his Puritan converts have learned to loathe as sheer diabolism. . . . Nevertheless it would be hard to overrate the debt which mankind owe to Calvin. The spiritual father of Coligny, of William the Silent, and of Cromwell must occupy a foremost rank among the champions of modern democracy. [Pages 57, 58.]

The Critical Period comes very near being a history of the United States during the years 1783–89. It treats the seven years in as many chapters: "The Results of Yorktown," as felt in England and used by the United States in making a favorable treaty of peace; "The Thirteen Commonwealths," descriptive o the political and social conditions in the different states at the close of the revolution; "The League of Friendship," which exposes the inadequacy of the confederacy; "Drifting toward Anarchy," which narrates the vain efforts to patch up the powers of Congress and depicts the general discontent with the existing government; "Germs of National Sovereignty," which shows how almost by chance a foundation for a true nationality was laid; "The Federal Convention," a long and critical history of the formation of the constitution in the convention; and "Crowning the Work," an account of its ratification in the different states. This is so full that one cannot but lament that the author did not recast and enlarge the lectures a little more and make a careful citation of his authorities on points of special importance. For example, on page 232 he quotes what purports to have been a speech by Washington to the Constitutional Convention at a very critical moment. Mr. Lodge, in his *Life of Washington*, has recently shown that if these alleged remarks of Washington were ever made at all, they could not have been made in the convention. In this case Professor Fiske's historical setting is certainly wrong. Has he any other authority for the quotation than Gouverneur Morris's eloquent eulogy? The excellent bibliography at the end of each volume will be of great assistance to the general reader, but it in no way satisfies the critical student of the period.

What impresses us most in reading these volumes is the breadth of view and liberality of the author. Professor Fiske has not merely the literary art of the historian, but he is a philosopher with abundant learning for careful historical speculation. His little volume on *American Political Ideas*, published a few years ago, showed that he was a profound student of universal history and could characterize an institution or an age in a single pithy sentence. This rare quality is especially apparent in the initial chapter of *The Beginnings of New England*, where the Oriental, the Roman and the English methods of nation-making are contrasted. In not a few cases he goes beyond the ordinary limits of his subject and explains ulterior problems in a masterly manner. In the chapter on the results of Yorktown he gives a brilliant account

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of the coalition between Fox and North, and of how the British Whigs helped our cause. Again, in describing the origin of our presidential office, he makes a lucid explanation of a curious blunder of the "fathers" in copying what is known as the "literary theory" of the English constitution instead of its actual law at the time. Owing to their lack of appreciation of the changes which had been wrought in the English constitution during the hundred years previous, they failed to see that George III was an exceptional political phenomenon. As a result, their creation of an executive is almost entirely different from what they intended.

FREDERIC BANCROFT.

An Introduction to the Local Constitutional History of the United States. By GEORGE E. HOWARD, Professor of History in the University of Nebraska. Vol. I: *Development of the Township, Hundred and Shire.* Baltimore, Publication Agency of the Johns Hopkins University, 1889. — 8vo, xv, 526 pp.

Professor Howard's book gives us a summary and comparison of the work already done on the subject of local institutions under the auspices of the Johns Hopkins university and laid before the public in the *Studies in Historical and Political Science,* of which this is the fourth "extra volume." It would not, however, be just to describe it as simply a summary. For, notwithstanding the large amount and the minute character of the work done on these lines by the Johns Hopkins university, the whole ground has by no means been covered. Professor Howard has therefore been obliged to make original investigations, especially in the Middle and Western states. He has further believed it to be necessary — somewhat in the manner of those historians satirized by Diedrich Knickerbocker in his history of New York — to go back as far as the times of the Cyclops as described by Homer, and to describe in some detail the Greek *phratria* and the Roman *curia,* to say nothing of the primitive *gau* of our German ancestors and the *tunscipe* of our Anglo-Saxon fathers. In one case he even goes so far afield as to devote several pages to the Iroquois brotherhood with all their phratries and gentes. As attempts to throw light on the organization of primitive society, such researches are interesting and valuable; but as explanatory of local institutions in the United States they seem to be practically useless. The Greek and Roman institutions have had, it may safely be said, no appreciable influence on our form of local government; the purely German almost as little; while all English influence dates from long after the Norman conquest. Few of the characteristics of Saxon administration were to be found in the system which our fathers borrowed from the

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land of their birth; and the changes which they made in that system were rather the result of the more primitive and democratic character of colonial society than a revival of either German or Anglo-Saxon institutions. The American system of local government was simply an Americanized copy of the English system of the sixteenth and seventeenth centuries. On this account it is useless, in describing its history, to go back much further than the time at which it was adopted; while it is certainly out of place to give a prominent position to the German governmental organization at the time of Cæsar or even of Tacitus. The result of such a method of presenting the history of American local government is the waste of a great amount of space and the overburdening of the attention and patience of the student.

Still, if one will pass hurriedly over these antiquarian researches and dwell only on the real body of the work, one will find that Professor Howard has collected an immense mass of most valuable material and has arranged and presented it in an unusually logical and readable form. Professor Howard is a careful student and a clear writer. In almost all cases, too, he is accurate in the statements which he makes; and for this accuracy he deserves great credit, since he has covered in this book a vast amount of ground. The great number of details with which he has had to acquaint himself probably accounts for the presence of those few mistakes which are to be found. The following are the only important errors which I have noticed. In describing the English parish, Professor Howard speaks (on page 37) of the parish constable as an elective officer. Gneist speaks of the constable as appointed usually by the justices. Again (on page 310) the statement is made that the sheriff has, throughout the whole of English history, been an appointed lieutenant of the crown. This is not strictly true; in the time of Edward II it was attempted to make the sheriff an elective officer, but the experiment was unsuccessful and return was made to the old method of filling the office by appointment. In another place (page 110) Professor Howard says, in describing the New York town, that in 1703 "a law was passed which marks an important epoch in the history of English institutions," for by it was established the elective office of supervisor. The law which really marks this epoch was passed in 1691 and not in 1703. It was repealed in 1701, when the office of supervisor was abolished and return was made to the old system of county government by the appointed justices of the peace. This was, however, so unsatisfactory to the people, after their taste of popular county government, that by the law of 1703 the elective system was revived and has remained up to the present time. The mistake is, however, quite natural; for the edition of the New York laws which Professor Howard has followed (*viz.* Van Schaack's) does not contain either the law of 1691 or that of

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1701, but the law of 1703 only, which was in force when the compilation was made. The two earlier laws may be found in another edition of the laws of New York, which includes the laws from 1691–1718.

The matter is not, however, a vital one; nor are any of the mistakes which I have discovered of sufficient importance to detract seriously from the value of Professor Howard's contribution to the literature of American administration. How wofully meagre that literature is, any one who has made any study of the subject well knows. This book is not only a valuable contribution to that literature, but it has also the distinction of being the first serious attempt to give a complete picture of the growth and development of our local institutions — institutions more important in the United States than in almost any other country on account of the very decentralized character of our government.

The usefulness of the book is greatly increased by a very full index, and by a list of "authorities cited" which amounts to an excellent bibliography of the subject.

F. J. GOODNOW.

Road Legislation for the American State. By JEREMIAH W. JENKS, Professor of Political Science, Knox College, Galesburg, Illinois. Publications of the American Economic Association, Vol. V, No. 3 (May, 1889). — 83 pp. and Tables.

Professor Jenks has done well in giving voice to the increased interest now manifested in the improvement of our public roads. At last it seems to be dawning upon the more intelligent of our country people that one of the greatest burdens they have to bear is the cost of getting their produce upon the nearest railroad or canal. In many respects it is remarkable that this important topic has attracted so little attention; yet after all it is no exception to the general rule which public interest follows. As our sympathies are more easily aroused by the wrongs of the Chinese or the Indian than by the sufferings of the poor in our own cities and villages, so the tariff or the national surplus attracts the farmer's eye more readily than the loss he sustains from the miserable condition of the road over which he daily travels. Nor is he more short-sighted than many of those who would educate him. We have a plenty of those who spend their time and money in teaching the farmer to see the burden of a fifty per cent duty upon leather; but who is willing to do the same to make him understand that because of poor roads his harness contains four times the leather it ought to have to draw the load?

The economic loss of the nation through the present condition of our roads is clearly presented by Professor Jenks, yet every one familiar with country life will say that he has been very moderate in his estimates.

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Even if the annual loss of the Illinois farmers be put as low as $15,000,000, the burden of poor roads is much greater than that of all the taxes they pay. Half of this sum annually expended would soon give the people of that state a system of roads of which they could be proud and at the same time secure to them many of the benefits of civilization which they cannot now enjoy. For good roads would be a most efficient agency for increasing the intelligence of our nation. At present the country people live in such small communities that they cannot have good schools and churches near enough to give their children that intellectual and moral education they need, nor can such small communities have those recreations and amusements which refined persons esteem most highly. The success of a little store at every cross-road with its high prices and poor assortment of goods tells too plainly the burden of getting to market. The farmer finds it easier to pay an extra cent for his sugar than to use up a day in getting to a larger market. If half of our storekeepers were put to work on the roads so as to open up the way to the stores of the other half, the public would be the gainers. A demand for more labor on our roads would certainly in this case be a demand for more commodities.

Professor Jenks is right in giving emphasis to the need of a better system in the laying out of roads. This is especially true of regions where hills and rocks abound. In riding through such sections the traveller is constantly going over hills which the road might easily go around. Oftentimes a change of a very few rods would avoid an ugly hill. I have wondered what was the theory upon which these roads were laid out. A farmer once suggested to me that the roads went over the hills to save the good land in the valleys. Perhaps this was a factor; yet the isolated condition of the farms when the region was first settled and the small amount of trade with the outer world were doubtless the leading causes of this inattention to so important a matter. Some day these errors must be corrected even if a few farmers have their meadows cut in two and roads put at the rear of their houses.

After showing the defects of our present highway system, Professor Jenks summarizes the road legislation of the more important countries of Europe. He endeavors to discover the reasons for the excellent condition of the roads in those countries, and to determine what portions of their system are capable of adoption here. He believes that our entire system of road administration should be remodelled; that a distinction should be drawn between the main roads and those of a purely local character; that the burden of building and maintaining each of these two classes of roads should be borne by the districts which they respectively benefit; and that our highways should be placed in the charge of permanent professional officers.

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The question of taxation for road purposes is less fully discussed; and it is to be regretted that our author has not paid more attention to the method of raising the money that will be required to pay for good roads. It is no easy matter to say where the money is to come from, so long as American prejudices prevent a development of our system of taxation. The burden of local taxation seems about as great as most localities can stand. Some new sources of revenue must be opened up if our schools, roads and other needed improvements are to receive adequate attention. The growth of local taxation has been much more rapid than that of national taxation, while the sources of national revenues are increasing more rapidly than those of towns and cities. In spite of inherited prejudices we must readjust our system of taxation so as to equalize its burden. The time must soon come when the nation will aid in the improvement of the localities of which it is made up by taking a part of the burden upon itself, just as all other civilized lands have been compelled to do.

In an appendix is contained an excellent tabular digest of the principal provisions of the road laws of our states and territories, prepared, under the direction of Professor Jenks, by Dr. Robert Weil of New York city.

SIMON N. PATTEN.

A Compilation of Constitutional Provisions, Statutes and Cases relating to the System of Taxation in the State of New York. Prepared by JULIEN T. DAVIES at the request of the Committee on Taxation and Retrenchment of the Senate, *etc.* The Troy Press Company, Printers, 1888. — 8vo, cxi, 494 pp.

No one can form an idea of the complexity and confusion of the statutory provisions governing the subject of taxation in our American commonwealths until he has attempted to reduce the chaos to order. It is almost as difficult to discover what our system is, as to offer detailed suggestions for its improvement. Mr. Davies, therefore, has earned the thanks of every economist and student of administrative law for publishing in exceedingly convenient form a complete compilation of the existing law in our most important commonwealth. The original compilation was published in 1886 as a small pamphlet intended principally for the use of the legislators. The volume before us is practically a new work of a most comprehensive nature.

Mr. Davies, it must be said, is not an economist but a lawyer. We must not expect to find in the work any economic disquisitions, nor even an acquaintance with accepted economic truths. It is not surprising, therefore, to find in the "general statement" the ancient error that "taxation is the correlative of protection." Mr. Davies studiously avoids

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all economic discussion and contents himself with a plain statement of what is, without seeking to analyze its effects or ascertain its causes. A careful perusal of the work has failed to disclose any important error or omission of fact; and the book is marred by a very few misprints only, as, *e.g.*, "interstate" for "intestate" laws on page 229. Every statute still in force is given section by section, and a collection of the cases interpreting doubtful clauses is appended to each section with a fulness that leaves nothing to be desired. In this matter, the precedent which the compiler has established is an excellent one, and its general observance is greatly to be desired. Some other American commonwealths have published more or less complete codes of tax laws, but none has furnished the statutory provisions accompanied by the judicial interpretation. Mr. Davies deserves the heartiest commendation for his laborious work, which has so smoothed the path of every student of American finance.

E. R. A. S.

Report and Testimony taken by the Select Committee of the House of Representatives to inquire into the alleged Violation of the Laws prohibiting the Importation of Contract Laborers, Paupers, Convicts, etc. Washington, 1889. — Three Reports: 6 pp. 5 pp. and 1 p. Testimony: 799 pp. Reports of Consuls: 157 pp.

The report of the committee on immigration is not worth serious consideration. The majority, after enumerating the various abuses which they have found, come to the conclusion that

the effect of the present unrestricted system of immigration, as applicable to the conditions under consideration upon the industrial situation of this country, has been very bad; and the committee believe that the time has come when immigration should be more effectually regulated; that persons who immigrate to the United States should at least be composed [*sic*] of those who in good faith desire to become its citizens and are worthy to be such.

The bill accompanying the report proposes a great variety of restrictive measures: a tax of five dollars; consular certificates; limitation of the number of passengers to one for each five tons of ship's burden; exclusion of anarchists, socialists and polygamists, besides paupers, criminals, contract laborers, persons intending to labor here for only a limited time and then return, *etc.* The minority consider these measures too drastic; and one member (General Spinola), while

prepared to go any length in advocacy of the passage of a proper measure to furnish absolute protection, in order to shut out paupers, lunatics, idiots, cripples and thieves, as well as all other evil-doers, who come here to practice their wickedness, and fill our poor-houses and prisons, . . . [is] unqualifiedly

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opposed to the passage of any law that will, in any way, check or stop the influx of honest immigration, believing that our happy and prosperous country will in the future, as in the past, continue to receive with open arms every honest, industrious man who may seek a home amongst us for the purpose of improving and benefiting his condition in life, whether such comer may be worth one dollar or one million of dollars.

But while the report itself is inane, not to say ridiculous, and is written in atrocious English, the testimony is of very considerable value. The patient searcher after truth (for the testimony is carelessly printed and vilely indexed) will find important evidence on the following points, *viz.:* That immigration increases the burden on our poor relief and charities; that paupers and even criminals are "assisted" to come to this country; that this assistance comes mainly not from the governments but from societies and philanthropic individuals; that there is now a considerable immigration of persons possessing a very low and undesirable standard of living; that the facilities for inspection of immigrants at Castle Garden are inadequate; and that the law against the importation of contract labor is constantly evaded and at best is difficult to enforce.

But besides these points (where the evidence is only corroborative of what had appeared probable before), the testimony elucidates in a new and startling way the process by which the competition of steamship companies has stimulated immigration and turned a social movement of the gravest political and economic importance to individuals and communities into a mere question of brokerage. This process may be described as follows:

Stress of competition led the steamship companies to establish agencies in this country for the purpose of selling prepaid tickets. Thus the Inman line has no less than 3400 agents here, and 33 per cent of its steerage passengers come on prepaid tickets. The Anchor line has 2500 agents, and 50 per cent of the immigrants come on prepaid tickets. These agents are selected from among the so-called bankers (exchangers), the boarding-house keepers and others who come in contact with the immigrant, and they are paid by commission. It was perfectly natural that they should use their endeavors to persuade immigrants to buy tickets and send them back for the use of their friends, the agent often sacrificing a part of his commission or selling the ticket on credit. The next step was to have a correspondent on the other side of the water to sell these prepaid tickets. These correspondents held out glowing accounts of the conditions of employment in America. They personally conducted the emigrants to the port of embarcation and promised that the "man" in New York should meet them and find them work. In some cases they persuaded the peasant to sell his little vineyard or

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farm; in others, they advanced the passage money, receiving in return a promise to repay a much larger sum out of the immigrant's first earnings in this country. The immigrants land penniless or deeply in debt; in either case relying for employment upon the agents on this side of the water. These men exploit them in a variety of ways. They board and lodge them, making enormous rents out of tumble-down tenement houses; they sell them bills of exchange and prepaid passages for their families; they find them employment, receiving a bonus which is euphemistically termed a "present to the boss"; they furnish laborers to railroad companies, receiving the contract to board and lodge them, in which case the company deducts the board money from the wages of the laborers. So numerous are these sources of profit that it seems as if the agents were not particularly concerned as to the repayment of the original passage money, lest their victims should escape from their influence and control. It appears from the testimony that, although there were three or four thousand Italians in New York unable to obtain work, yet the agents were constantly bringing over others. In the case of immigrants from South Italy there has thus been established a complete system of "induced immigration" — on the basis, however, of pure freedom of contract. A mass of contradictory evidence yields in this case an important practical result; and other portions of the testimony, if rightly treated, would yield similar results.

It is to be regretted that this committee, after undertaking the responsibility of an official investigation, and after compelling so many persons to attend and testify and, in many cases, to disclose their private affairs, should not have had the ability or the disposition to give us a scientific analysis of this great social movement and its underlying causes. If the only result reached by such a committee, armed with all the powers of the law and expending so much time and money, is denunciation of manifest evils and the proposal of impossible remedies, the general public may well despair of finding any solution of the problems which our complicated civilization forces upon us. Such investigations should be undertaken seriously and in the true scientific spirit, or they should not be undertaken at all.

RICHMOND MAYO SMITH.

Arnold Toynbee. By F. C. MONTAGUE. Johns Hopkins University Studies in Historical and Political Science, 7th Series, I. Baltimore, 1889. — 70 pp.

It was a happy thought on the part of Professor Adams to request, and it was a wise decision on Mr. Montague's part to allow the publication of this sketch of the life of Arnold Toynbee in the *Johns Hopkins*

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Studies. England and America have both to gain by a closer sympathy and fellowship between the economists and social reformers of the two countries. The very appearance of this memoir, and of the account of Toynbee Hall in London and the Neighborhood Guild in New York by which it is accompanied, is a tacit confession that the circumstances of the Old and New Worlds are no longer so dissimilar as they but lately seemed to be.

Mr. Montague has performed his labor of love faithfully and with delicacy. Purposely avoiding strong contrasts of light and shade, and using the quietest colors, he has painted for us the picture of a man who even in our own time, though breathed upon by all the influences of the modern spirit and restrained in all his work for his fellowmen by the scientific conscience, could yet live the saintly life. It is the highest praise that can be given to the memoir to say that it is not unworthy of its subject.

Yet welcome as it is, it fails, in the judgment of the present reviewer, to bring into due prominence those features in Toynbee's life and action wherein above all lies his importance in the recent history of English thought. Toynbee is important, not so much as a philanthropist or as an example of unselfishness, still less as a "church reformer," but as an economist, as the initiator of a new and fertile development in English political economy. To many even of his personal friends, and in no place more than in Oxford, this is a hard saying. So much was expected of him and he left behind so little! What fragments of his writings and teachings were put together after his death are so disjointed, so full of apparent inconsistencies and changes of opinion! It is so clear that both in his discussion of theory and in his practical proposals he did but follow other men — Comte, Cliffe Leslie, Walker, Bagehot, Mundella, Sedley Taylor! Even his historical work might after all seem rather an indication of what he might have done than in itself any considerable achievement. But a man's importance is to be measured not by his consistency nor by the bulk of his writings, but by the impression he has been able to produce. That impression in Toynbee's case may perhaps be defined somewhat as follows:

First, at a time when the study of political economy had sunk to its lowest point in England, he did perhaps more than any other man to create a new interest in it, a new belief in its seriousness as a scientific discipline, a new hope that in it might be found some help in the solution of pressing economic problems.

Secondly, he turned this new interest in the direction of the historical investigation of social development, and of the direct examination of existing phenomena. His merit in this respect is none the less because he himself spoke with diffidence of the historical method and did his

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best to convince himself that the traditional method of deduction was indispensable. The whole bent of his mind was toward history and toward the concrete descriptive presentation of social facts. Any one who compares, for instance, the account of the economic changes of the later part of last century and the earlier half of this in his lecture on *Industry and Democracy*, with his attempt at constructing a theory of wages in his lecture on *Wages and Natural Law*, will see how much more successful he is in the former, how much more the former contributes to the understanding of modern difficulties. This is the direction in which the influence of Toynbee's example is likely to be most effective. It is seen already in the character of the work undertaken by the "Toynbee trust." And it must not be forgotten that, fragmentary as are the lectures on the *Industrial Revolution*, they yet form the only history we yet possess in English of that momentous change; and that, to mention only one authority, they seemed sufficiently valuable to that eminent publicist, M. Boutmy, for him to base upon them a great part of his work on England.

Thirdly, Toynbee was the first professed economist in England to distinctly recognize [illegible]ement of good in the scientific socialism of to-day, and to see in a cautious extension of the functions of the state one of the most effectual preventatives of revolution.

Toynbee's resemblance in these two last respects to the historical school in Germany, and in especial to the *Katheder-Socialisten*, is, of course, too marked to escape notice. It is therefore necessary to observe that Toynbee was but scantily acquainted with German economic discussions, and that whatever impulses from outside affected him came rather from Comte, from Ruskin, from Stubbs and from Maine.

The reviewer may perhaps be allowed, before bringing this notice to an end, to add a word or two of personal reminiscence to Mr. Montague's account of his friend. He had read through one or two of the ordinary text-books when he went to Toynbee for advice as to how to continue his economic studies. The advice was characteristic: "Take some one subject, *e.g.*, wages, and, beginning with Adam Smith, read in chronological order what each noteworthy English economist has said upon the subject, and see if you can make out the way in which various doctrines have arisen and been modified." The reviewer may be wrong, but it is his impression that few, if any other, economists would then have been found in England who thus made the historical *development* of theory the governing principle in their teaching.

He remembers again how for three terms, during 1881 and 1882, he with sixty or seventy others, mostly undergraduates, but some few graduates like himself, listened Saturday after Saturday in Balliol Hall to Toynbee's lectures on the industrial revolution; and how that

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slim, graceful figure seemed to tremble and his hands were nervously strained together, as he tried to make us realize how vast and awful a revolution it had been. And then from the spacious hall and pleasant college garden his thoughts go to a dingy room in a miserable tavern, where, amid smoke and the clatter of alepots, the sensitive and overwrought scholar presented himself for the suffrages of his fellow-citizens, and told them how much might be done even with our existing social machinery, if those who guided it did but understand of what it was capable.

W. J. ASHLEY.

The Consumption of Wealth. By SIMON N. PATTEN, Ph.D., Professor of Political Economy, Wharton School of Finance. Publications of the University of Pennsylvania, Political Economy and Public Law Series, No. 4. Philadelphia, 1889.

The underlying idea of this essay is an interesting one. It is this. As nations advance, their habits of consumption change. What was an advantage in the struggle for existence at one period becomes a disadvantage at another. The nation which can best adapt its habits to its environment is most likely to prevail. True economy in consumption marks a decisive superiority on the part of the race which practises it. Professor Patten attempts to show in outline the effect of this process of survival upon economic conditions. The interest of the problem renders the inadequacy of its treatment quite disappointing. The idea is not well carried out. The author makes grave mistakes in deduction, and highly questionable statements of fact.

To study the effect of changes of consumption, we must first know how equilibrium is secured under given conditions of consumption. The statical solution must precede the dynamical. This part of the work was brilliantly performed by Jevons in his *Theory of Political Economy*. The essential correctness of Jevons' solution has never been challenged. The criticisms of the Austrian writers deal with points of detail which do not materially affect the purpose in hand. Professor Patten recognizes the need of a preliminary analysis of this kind. But instead of using that of Jevons he develops one of his own. He probably thinks it an advantage to avoid the use of the differential calculus. But in so doing he falls into serious errors which render his whole treatment of the subject incorrect.

He assumes that men will always seek to get the best *ratio* of pleasure to pain. This is not true. It would be nearer the truth to say that they will seek to get the greatest *excess* of pleasure over pain. Suppose that in a given time one course of action involves two units of pain and four of pleasure; while another involves five units of pain and eight

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of pleasure. Professor Patten says that it is self-evident that a man will choose the former. It is not. A large part of the progress of mankind is due to the fact that a great many men will choose the other alternative, and make great sacrifices for the sake of great results.

Professor Patten's fundamental proposition, so far from being self-evident or universal, is less likely to be true the better the man or the race concerned. It is not the best railroad which has the lowest percentage of operating expenses. A road which makes $500,000 and spends $250,000 does not do so well, either for itself or for the public, as one which makes $1,000,000 and spends $700,000. It is the excess of performance over cost, not the ratio between the two, which determines the merit. It is of course extremely well if both kinds of economy can be combined in the same man or the same race; but it does not generally occur. "Penny-wise, pound-foolish," is a proverb which applies to races as well as individuals. Those who contend most for the smaller economy of consumption usually undervalue the larger economy arising from increased efficiency.

The essay before us furnishes a curious example of this. The author believes that the tendencies of improved production are adverse to the workingman, and that competition favors the cheaper man. "The facts upon which this opinion is based," he says, "have been frequently presented with the greatest possible clearness." He does not even deign to give references. If he had once tried to do so, he must have seen the necessity of modifying his statement. He cannot be so little acquainted with modern economic discussion as to have read only one side of this question. It must have been carelessness which led him to treat it as settled, and make the supposed settlement the basis for subsequent reasoning. There may be room for doubt as to which side is right; but there is no room whatever for doubt that there are two sides to the matter.

But the radical fault of the work lies far deeper than any errors of detail. The author tries to apply a highly abstract method without the necessary mathematical training. If a man should undertake to make new discoveries in theoretical physics without the aid of the differential calculus, he would be laughed at. But the relations of pleasure and pain are vastly more complex than those of ether or electricity. The results cannot be so accurately measured; but this only furnishes an added reason for care in the deduction. In other fields of economic inquiry a man may do well with simple arithmetic; but in that chosen by Professor Patten, he must be fully alive to the distinctions between ratio and difference, between intensity and quantity, between rates of variation and amounts of variation. He must see that a relation which subsists between differentials does not necessarily hold good between their integrals — with the total integral almost never, with the integral

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between time limits only under special restrictions. A neglect of these matters will cause an investigator to treat two wholly distinct propositions as equivalent. A marked instance of this is seen on page 19, where the author deduces his proposition about ratios of pleasure and pain from a substantially true proposition which seems at first sight to warrant the inference but which really has absolutely nothing to do with the case. A part of the danger may be avoided by great care in verification; but as a general rule the calculus of pleasure and pain is a hazardous field even for the trained mathematician, and an unending series of pitfalls for everybody else.

ARTHUR T. HADLEY.

An Investigation into the Causes of the Great Fall in Prices, which took place coincidentally with the Demonetization of Silver by Germany. By ARTHUR CRUMP. London, Longmans, Green & Co., 1889. — 184 pp., appendix, 14 pp.

By entitling this performance an "investigation" the author sets quite too high a value upon his work. Not only is it innocent of the scientific quality, but it can lay claim to being little more than a compilation, hastily put together, of the views of only a few of the writers on the subject of gold and prices. The author quotes Mill abundantly, as if that writer were unknown to the majority of his readers, and takes no little pleasure in discovering that Mill always agrees with him. The book being made up on the scrap-book plan, we must accept the propriety of taking up twenty-five pages with extracts from Mr. Wells' articles and inserting thirty pages from trade circulars relating solely to tea, as well as long articles from the columns of the *Pall Mall Gazette*. The absence of any mention of Soetbeer and Nasse probably shows the writer's linguistic limitations.

The work does not admit of serious criticism as to method. The author is naïvely *a priori*, if anything. He states (page 9) what the conclusion of the "investigation" ought to be; refers to the vagueness of arguments for opposing conclusions; and holds as follows: "This is our view, in fact, of the lines upon which an investigation should be undertaken, and upon which we think it can be satisfactorily carried through."

The book is probably the work of some man of practical experience, having no statistical standards, who wishes to convince the world of the truth as he sees it. In this laudable effort, he brings forth nothing previously unknown. His omission of German authorities causes him to miss the strong points to be urged in his own support. He calls attention, however, to a refutation of Mr. Goschen's theory (that prices fell owing to a scarcity of gold) which has resulted from the mere lapse of

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time. Since Mr. Goschen used his list (May, 1883) to show a decline of prices, some of the prices selected have inconveniently risen. If Mr. Goschen's logic is sound, and if scarcity of gold caused a fall, why should we not conclude that, since prices rise, gold is abundant? At least we may see the absurdity of assigning every change of price to changes in the quantity of gold. It is significant that Mr. Goschen has not in the last six years returned to this subject.

The quality of this book recalls only too vividly the painful gaps made in the ranks of English economists by the deaths of late years.

J. LAWRENCE LAUGHLIN.

On Parliamentary Government in England: Its Origin, Development and Practical Operation. By ALPHEUS TODD, LL. D., C. M. G. Second Edition by his Son. London, Longmans, Green & Co., 1889. 2 vols. xxx, 844, xxiv, 964 pp.

Over twenty years ago Dr. Alpheus Todd, then librarian of Parliament for the Dominion of Canada, published his work *On Parliamentary Government in England*, which has since remained the standard work on the subject in the English language. Since the time of its publication many changes have been made in the law; and all interested in the government of England have been looking forward with eagerness to the promised second edition. Its issue was delayed by the death of Dr. Todd in 1884, after an active and laborious life, more than fifty years of which were spent in the public service. The work, however, has been carried on to completion by the author's son, Mr. Alpheus H. Todd, who says, in the preface to this edition, that his task has been confined to the necessary preparation of the manuscript for the press, and to the making of certain changes in the arrangement of the material which Dr. Todd's notes showed that he had intended to make. The new edition is therefore substantially the work of the elder Todd, and has therefore all the excellences and at the same time all the defects by which the first edition was characterized.

The excellences of the work are the thoroughness, exhaustiveness and general accuracy with which every subject coming under consideration is treated. If Parliament ever made any resolution of importance on any of its prerogatives or on those of the crown, some reference to it will pretty certainly be found in this book. It may not be exactly in the place one would expect to find it, as Dr. Todd's ideas of arrangement do not always coincide with those of his readers; but one can feel tolerably certain that the desired reference is somewhere in the book. Further, one may be quite sure, as a general thing, that any statement made by Dr. Todd is true. It would be difficult to find an actual mis-

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statement in the book. In some cases, it is true, it is necessary to read perhaps six or seven pages to gain a correct impression, since what is said on one page is often modified, in some cases even contradicted, by what follows. This is especially noticeable as regards matters that have been changed by modern legislation. The modern legislation is usually given in the form of a sort of appendix to the text. Dr. Todd's acquaintance with modern legislation was apparently greater than his success in incorporating changes into the text of his first edition. Perhaps the cause of this confusion is that Dr. Todd was taken away before he had time to rewrite those portions of his book which required rewriting, and that his son has either not deemed himself fitted to make the necessary changes or has preferred to let his father's work come before the public in very much the same condition in which his father left it.

In one or two cases, however, there are actual misstatements made for whose presence in a book which is otherwise so accurate it is difficult to account. For instance, on page 262 of the first volume, the statement is made that the Act of Settlement has limited the inheritance of the crown to the heirs of the body of the Princess Sophia of Hanover, being Protestant members of the Church of England, and married to Protestants only. This of course is not exactly true. The Act of Settlement says not a word about the heirs being members of the Church of England, but only requires that they shall be Protestants, and then says that if they accept the crown they shall become members of the Church of England. If they were members of some other well-recognized Protestant confession, they would still be capable to succeed, and would not, as Dr. Todd seems to imply, be excluded from the succession. The only other actual inaccuracy of statement that I have noticed — which is not, however, an important one — is to be found in a comparison which is made between the English and American civil service. Dr. Todd was evidently not acquainted with our civil service law of 1883, and alludes to our civil service as it was before the passage of that law, and the formation of the civil service commission.

The arrangement of the subject matter, it must be said, is not generally good. It involves frequent repetition — of which the author seems to be conscious; for he says he has adopted the present method in order that each matter examined might be thoroughly treated, even at the expense of repetition. But aside from this, the arrangement is not good. The transition from one subject to another is not always made clear, and matter is often forced into places where it does not in any way belong and where, being absolutely extraneous, it serves simply to distract the reader's attention and to throw him into confusion. But aside from these defects — which are mainly of style, rarely of substance

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— *Parliamentary Government* is undoubtedly one of the most valuable books in the English language (if not the most valuable) on the government and administration of England. Certainly no other gives so much detailed information; and very few are so broad in their scope. It is the only English work of any scientific value which treats of the organization and action of the English executive departments. F. J. G.

The Swiss Confederation. By Sir FRANCIS OTTIWELL ADAMS, K.C.M.G., C.B., late Her Majesty's Envoy Extraordinary and Minister Plenipotentiary at Bern, and C. D. CUNNINGHAM. London, Macmillan & Co., 1889. — 8vo, 289 pp.

A decided merit of this book is the familiarity it shows with the practical working of Swiss institutions, a result of the residence of the authors in Switzerland and their acquaintance with many of its leading men. Chapters on the legislative and executive departments, the federal and cantonal judiciary, the *referendum*, political parties, the communes, the cantons, the army, religion, education, commerce and other subjects give a good deal of interesting information which an ordinary manual would not be expected to contain. We are told, for example, that the Federal Council is not made up exclusively of representatives of the dominant party; and the willingness to give other parties representation in this executive board is attributed to the diversity of nationality and language which prevents the division of the chambers into a ministerial and an opposition party, although it is no doubt due in part to the dependence of the Federal Council on the legislature whose will it carries into effect.

But despite its merits this book cannot be regarded as a contribution to the study of political science. The authors show little grasp of the comparative method, and they are not always accurate. The convention of Stanz, concluded nearly four centuries before the creation of a federal state, is spoken of as still further increasing federal sovereignty, while the Swiss federal state and the United States of America are referred to as leagues. The fact that the ultimate decision lies with the people through the *referendum* is suggested as an explanation of the lack of authority on the part of the supreme federal tribunal to declare laws unconstitutional. This explanation wholly disregards the fact that in the United States, where the courts have this power, the federal constitution is not made by Congress but by other organs of the people; while in the single commonwealths, where the courts again exercise this power, the constitutions are commonly adopted by popular vote, *i.e.*, by *referendum*. When we remember that the right to declare laws void is not regarded throughout Europe generally as judicial in its character and hence has

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not been entrusted to the courts, we have the true explanation of the incompetence of the Swiss courts in this regard. In the chapter comparing the institutions of Switzerland with those of the United States occurs the statement that the number of cabinet ministers in the latter country "rests upon no law, and is in the discretion of the President."

R. HUDSON.

International Law. A Series of Lectures delivered before the University of Cambridge, 1888. By HENRY SUMNER MAINE, K.C.S.I. New York, Henry Holt & Co., 1888. — 8vo, 234 pp.

It is with a renewed and keen regret that the admirers of Henry Sumner Maine will read this last and posthumous volume of his writings, reminding them as it does on every page how great is the loss which English jurisprudence has sustained by his death. The lectures of which this volume is made up were not prepared for the press by the author; but his literary executors, Mr. Frederic Harrison and Mr. Frederick Pollock, found the manuscript in such shape that no editorial work was needed "except . . . to clear the sense of an occasional passage, which in the copy as it stood was obscure or plainly defective."

No one will seek, in a body of twelve lectures delivered to students, a handbook of international law or anything more than an introduction to its study. But such an introduction necessarily treats the philosophical side of the subject, the nature, origin and sanction of international law; and certain chapters contain, as anything written by Maine might be expected to contain, interesting and suggestive passages.

In certain places the author seems to assign to international law, or at least to some portion of it which he regards as "natural" and "necessary," a divine origin and sanction (pages 22, 35). But "positive" international law rests, in his opinion, upon usage. He compares (page 19) the appearance, growth and general acceptance of the modern doctrine in the seventeenth and following centuries to the preceding and strikingly analogous phenomenon of the reception of the Roman law:

> In truth, far the most influential cause of the extension of particular laws and of particular systems of law over new areas was the approval of them by literate classes, by clergymen and lawyers, and the acquiescence of the rest of the community in the opinions of these classes. When then we are asked by what legislative authority international law came to be adopted so as to make it binding on particular communities, we should rejoin that the same question must first be put respecting the extension of Roman law, and of every other system of law which, before the era of legislatures, gave proof of possessing the same power of self-propagation.

It is also true, as Maine goes on to say, that the reception of the Roman law prepared the way for the development of modern international law;

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and it is true, in a sense, that the latter movement was a continuation, "a late stage," of the former. But I think that our author goes too far in saying that the new doctrine "consisted mainly" of Roman law. Much that Grotius and his successors declared and perhaps thought to be Roman law was really quite new. The very basis of modern international law, the equal right of all states to independent existence, was foreign to the Roman law. And many doctrines of international law which call themselves by Roman names are completely new things. The jurists of the seventeenth century were trained in Roman modes of thought and expression, and they put their new wine into the old bottles. In the law of dominion and in that of postliminy, for example, and in many other instances, they developed the new doctrines according to the analogy of the old, and even quoted passages of the Digest to show that they were applying Roman law; but in reality they were making new law of a new order. They were widening institutions of Roman private law into institutions of public law. The Romans themselves followed very few of the public-law rules which the seventeenth century regarded as Roman. Maine's allusions to the Roman law suggest, at least, that he imagines the Roman *jus gentium* to have been full of public-law rules. In fact, of course, it dealt mainly with private law.

Points of especial interest in the book are the discussion of Chief-Justice Cockburn's opinion that the rules of international law must be *expressly* accepted by each single state, — a view which is justly rejected and over against which the author sets, with approval, the American doctrine, as contained in the decisions of our federal courts and in the declarations and opinions of our executive department (pages 35 *et seq.*); the rejection of the "American fiction" of the ex-territoriality of private ships (pages 88 *et seq.*); the examination of the attitude of the United States towards privateering (pages 101 *et seq.*); the forecast of probable changes in the law of contraband in consequence of changes in naval construction, and in the law of blockade because of the relative ineffectiveness of blockades against countries well supplied with railroad communications (pages 113 *et seq.*); the approval of the suggestion of the United States that private property be exempted from capture at sea as well as on land, — a proposal that "might well be made by some very strong friend of Great Britain" (page 221); the description of modern usages in warfare, in lectures 8 and 9 (pages 143–185), and the discussion of the propriety of confiscating debts (pages 201–206), a matter of especial consequence to England because of "the extent to which British financial and economic interests are bound up with the sanctity of foreign loans."

Many suggestive pages in the book are due to a curious injunction

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laid upon the lecturer by the founder of the chair from which the lectures were delivered.

> The eminent man who founded the Whewell professorship of international law laid an earnest and express injunction on the occupant of this chair that he should make it his aim, in all parts of his treatment of the subject, to lay down such rules and suggest such measures as might tend to diminish the evils of war and finally to extinguish war among nations.

Dr. Whewell, it is hardly necessary to say, founded the chair and formulated his injunctions during the long peace which began in 1815. He belonged to a generation which "may be said to have had a dream of peace," and which, unlike Count Moltke, thought such a dream a beautiful one. Since then, Europe and America have been convulsed by a series of terrible wars; new wars are imminent; the recent struggle between the French and the Germans and that between the Russians and the Turks have "unveiled the bases of quarrels of which we have not seen the end"; and the "intrusion of war into peace" by the gigantic armaments of modern Europe makes the dream of peace, so real in 1850, an unsubstantial fabric indeed to-day. Maine does not foresee any great or sudden change; still less does he believe that such a change will be produced by any "mere literary agency." But he finds a rational comfort in the reflection that "war appears to be as old as mankind, but peace is a modern invention." He finds that empire, which is "no doubt . . . a result rather of man's rapacity than of his humanity," has been the most effective agency in checking "the universal belligerency of primitive mankind." The Roman empire kept the Mediterranean basin at peace for centuries; "the amount of bloodshed prevented by the Chinese empire is incalculable"; and if the Indian empire were dissolved "the territories which make it up would be deluged with blood from end to end." From this point of view, the formation of national states in the present century, the unification of Italy and Germany, is a great step forwards. Defensive alliances — combinations to prevent war — have also played a beneficent part since the days of the Greek *amphiktiones;* it is such an alliance that maintains the peace of Europe to-day (pages 224 *et seq.*). Arbitration has been and will be of use, but it cannot solve all questions (pages 210 *et seq.*). As regards the mitigation of war, Maine has no difficulty in tracing steady progress; nor in showing that in this respect, at least, "mere literary agencies" have exercised great influence.

On page 143, "the use of explosive bullets *above* a certain weight" is said to be prohibited. We must of course read "*below* a certain weight."

MUNROE SMITH.

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Zur Litteraturgeschichte der Staats- und Sozialwissenschaften. Von GUSTAV SCHMOLLER. Leipzig, Duncker und Humblot, 1888. — 8vo, xii, 304 pp.

Just as Gustav Cohn has been called by his fellow countrymen the best German essayist in economics, so may Gustav Schmoller be described as *facile princeps* among German reviewers. The leader of the extreme historical sect in political economy has not won his position undeservedly. Professor Schmoller is not only a thorough economist, but a thorough historian and fully equipped with the widest philosophical training and knowledge. His historical works, whether on mediæval industry, mediæval commerce or mediæval taxation, are alike characterized by this broad philosophic spirit which has enabled him more successfully than any economist (except perhaps Rodbertus) to clearly expound the connection between the economic and the other phases of the world's development and to point out the close interdependence between law, politics, ethics and economics. In breadth of view, in depth of foundation, Schmoller is immeasurably superior to the English economic historian, Thorold Rogers. It is just these qualities that make Schmoller such an admirable reviewer. He seizes the salient traits of a work, and always succeeds in raising the discussion to a higher plane by noticing only the broader aspects of the question. He reviews by preference books on general theory and general economic development, but even in his notices of special works he traces with a light and graceful touch their relations to the wider problems of social progress.

The volume before us is a good example of Schmoller's best work. It is a collection of thirteen reviews, the majority of which have already been published during the past twenty-five years in various periodicals, chiefly in his own *Jahrbücher*. Most of these, however, have been revised and amplified. But the central essay, on Wilhelm Roscher, is entirely new, and the volume itself appears as a testimonial or *Festgabe* to Professor Roscher on the fiftieth anniversary of his doctorate.

Economists will perhaps find the first two essays, on Schiller and Fichte, too elaborate for their special purposes. They belong indeed more properly to a philosophic than to an economic treatise, but show Schmoller's tendency to philosophic generalizations in social development. On the other hand the last essay (written in 1883), on Menger, Dilthey and the recent Austrian reaction, belongs to a discussion that is still fresh in the memories of all; for this review, with its sarcastic touches, called forth Menger's bitter reply on the mistakes of the historical school (*Die Irrthümer des Historismus in der deutschen Nationalökonomie*). Fair-minded critics must confess that Schmoller, although

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perhaps a little extreme, emerged from this controversy victorious, and that he incontestably vindicated the claims of the historical school. The contest of principles has transferred itself during the last few years to this country also. In America the few older adherents of the orthodox school still pursue their way peacefully, seemingly unconscious of the attacks made upon them, but gradually losing touch with the mass of educated men. On the other hand the younger economists who still swear by the *a-priori* natural law method are in reality suffering a delusion. They think themselves still upon orthodox ground, but in truth they have insensibly been crowded from their old position. We hear a great deal about the "old school" and the "new school," but it is safe to say that McCulloch, Senior and the Manchester sect would fail to recognize the younger "old school" as their progeny. It is an easy matter for the younger "orthodox" writers to accept the chief reforms of the historical school, and then to say: "But we have always taught this." In reality they are teaching something quite different from the doctrines of their assumed spiritual fathers. To see the logical outcome of the orthodox method we must look to France. Compare its state of apathy in economic science until the last few years with the intellectual activity of Germany or Italy, and you see the effects of orthodoxy on the one hand and of sceptical heterodoxy on the other. That the extreme historical economists have sometimes erred by excessive impetuosity is no reason for denying that the historical and comparative method has to-day become an indispensable part of the economist's mental outfit. This does not imply that the economist must not employ abstract reasoning, but simply that his premises must be true to the facts, not creatures of fancy, and that his conclusions must conform to the tests of historical and statistical treatment. Economics is a social science, *i.e.*, it is an ethical and therefore an historical science, since ethical and social facts are the product of history. It is not a natural science, and therefore not an exact or a purely abstract science. If the "orthodox" will only bear this in mind, reconciliation will become an easy matter.

Schmoller's whole career has been an attempt to prove the truth of these doctrines, although he has undeniably laid himself open to the charge of being more of an historian than of an economist. All those, however, who desire to ascertain how current economic theories are regarded from the historical standpoint will do well to read the reviews of List, Carey, von Stein, Knies, Schäffle and Hertzka. These, together with essays on Henry George and certain recent works on statistics, complete the volume.

The central essay on Roscher, as was to be inferred from the dedication, is most eulogistic. At the same time it is conservative. Schmoller

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declares that not only is Roscher the founder of the whole new movement in economics, but that he is to be admired on account of his reverence for his predecessors. Roscher in fact attempted not so much to overthrow as to build up. He accepted the conclusions of Adam Smith, Malthus and Ricardo, but sought to expand, to modify, to classify them. His wondrous historic learning enabled him to explain much that had been dark, and to add much to our fund of economic knowledge, especially in the second and third volumes of his great work — those on agriculture and commerce. Roscher of course is always to be spoken of with the highest respect, and yet a doubt often forces itself upon us whether he fully represents what is most vital and progressive in recent German development; whether his work is not too anecdotal and fragmentary, and whether his books have not more of an illustrative than of a dogmatic character. But Schmoller gently glides over these possible shortcomings and, as is fitting in such a book, calls attention only to what is valuable, noble and elevating in Roscher's work and character. And for this he deserves our thanks.

EDWIN R. A. SELIGMAN.

Karl Rodbertus: Darstellung seines Lebens und seiner Lehre. Von H. DIETZEL, Professor zu Dorpat. Abtheilungen I, II. Jena, Gustav Fischer, 1886, 1888. — 92, 240 pp.

Literature concerning Rodbertus continues steadily to increase in Germany. We have here the first two instalments of what promises to be the most important contribution yet made to the analyses and criticisms of the works of the great socialistic thinker. The first part discusses the scientific and political career of Rodbertus; describing with considerable minuteness the course pursued by him in the Prussian parliaments of 1848 and 1849, and tracing with care his attitude towards Lassalle and towards the new German empire. In the second part the author devotes himself to the task of describing Rodbertus's theory of society and of the course of historic development, and to a criticism of the same. In a third part, still to be published, his economic theories are to be subjected to a similar treatment.

In spirit the author is impartial. He is neither a disciple nor an implacable opponent. He has no preconceived theory of social phenomena or tendencies to support. He writes from the standpoint of the historian, seeking to find the central idea of Rodbertus's system, and to ascertain the position which, as a social philosopher, he really occupied. The work is evidently based upon a most thorough study of Rodbertus's writings, and many suggestive points are brought out which previous writers have overlooked.

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Professor Dietzel holds that the central idea of Rodbertus's system, which he early adopted and from which he never departed, was this: *The community is the end in itself.* Individuals are only means for the promotion of social well-being; they are in no sense ends in themselves. He then is the only uncompromising socialist; always, upon the main point, self-consistent. The works of other socialists, it is maintained, reveal that their aim has been to bring about social reorganization that thereby individuals might be made happier. They thus appear, upon the last analysis, to be individualists. But to the mind of Rodbertus the ideal social state, the highest common weal in itself considered, was the only object worth striving for. This seems to be a somewhat finely drawn distinction and one which would scarcely occur to the ordinary student of the works of the great socialists. The ideas involved are so difficult to grasp that probably they themselves were not always conscious of the ultimate object they were seeking. Professor Dietzel, however, claims that Rodbertus adopted the Greek conception of the state, and adapted it to modern conditions with the help of the theories of Fichte, Schelling and Hegel. From Schelling he borrowed the notion that society is analogous in all respects to external nature, only idealized in capacity and form; a higher manifestation of the world-spirit, of God. Therefore, as animals and stones are not ends in themselves but only serve the purposes of the general frame of things, so the individual is an atom which exists solely that it may form a part of the great structure called the state. St. Simon also lived much under the influence of Schelling; therefore a marked similarity is found between some of his views and those of Rodbertus.

Professor Dietzel also seeks to show that Rodbertus's public life and the attitude which he took toward later German questions were determined by his controlling idea. In 1848 he was a democrat, an advocate of the Frankfort plan of securing a union of Germany on the basis of popular sovereignty. He wanted a great consolidated democratic state. His views and those of Bismarck as to methods were then diametrically opposed. Bismarck triumphed. Then Rodbertus was ready to support the cause of German unity under the leadership of the monarchy. His object was unity, consolidation, the strengthening of the state, under whatever form it might come. Then the state should lead in the work of social reform and make its sway universal. When, in his later years, he thought that Bismarck would not inaugurate the new era, Rodbertus meditated active co-operation with the party of the social democracy. But before this could be carried out he died.

In the critical portions of this work it is shown with clearness and force that in the ideal socialistic state the individual would be hopelessly sacrificed, and the conflict of interests would be intensified rather than

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moderated. The establishment and maintenance of harmony under such conditions would be a task far beyond the power of any administrative system. Rodbertus's theory of historic development is also subjected to a searching criticism and proven to be wholly untenable. It is also shown that he constructed it quite late in life, and borrowed it to a large extent from earlier writers.

The effect of such a work as this is healthy. It corrects the tendency to hero worship, and by a calm appeal to facts shows how little benefit society can derive from attempts to introduce any of the ideal systems so popular in our time. A thorough study of the history of opinions and institutions is the proper antidote for all theories, whether of extreme socialism or extreme individualism.

H. L. OSGOOD.

Hanserecesse: Dritte Abtheilung, 1477–1530. Bearbeitet von DIETRICH SCHÄFER. Herausgegeben vom Verein für hansische Geschichte. Leipzig, Verlag von Duncker und Humblot, 1881, 1883, 1888. — 3 Bde. 4to, xv, 598, xvi, 687, xii, 590 pp.

The Hanseatic league is of such importance in the history of mediæval economic life that the publication of new materials on the subject must always be warmly welcomed. Among the most important of these must be ranked the comprehensive collection known as the *Hanserecesse*. The first set (1256–1430) was published years ago in five volumes, by the Royal Bavarian Academy of Sciences; the second set (1431–1477) was published in four volumes by the Union for Hanseatic History, and edited by Professor von der Ropp. The present set (1477–1530) is published by the same society and edited by Professor Schäfer, of Jena, who had shown his qualifications for such a task by his valuable book on *Die Hansestädte und König Waldemar*. Like the previous collections, they contain all manner of reports, accounts of proceedings, conventions and official correspondence relative to the league. The manuscript sources were collected at infinite pains from the municipal archives of numerous North German cities, and are verbally reprinted without commentary or explanation. In the introductory chapter to each volume, however, Professor Schäfer gives an interesting *résumé* of the general course of events, and of the vacillating fortunes of the league during the period in question. To all serious students of the Hansa this exhaustive compilation will bring the amplest possible materials.

E. R. A. S.

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Principes d'économie politique, par CHARLES GIDE, professeur d'économie politique a la faculté de droit de Montpellier. Deuxième édition complètement refondue. Paris, L. Larose et Forcel, 1889. — 616 pp.

In this second edition Professor Gide has entirely rewritten his general treatise on political economy. In its present form the work is a comprehensive expression of that liberal movement in French economic thought that recently led to the founding of the *Revue d'économie politique*. With the accurate analysis that is nearly universal in French scientific literature, it combines the breadth of view that is characteristic of the newer German schools. It does justice to all recent and influential movements. In an early chapter it so describes the classical, the socialistic, the historical and the catholic schools as to reveal their respective weaknesses as well as the underlying truths that give to their theories vitality.

Professor Gide treats economics as a social science having a close relation to ethics. It is, as he maintains, a true science, since it deals with phenomena that are governed by natural law. The conception presented of this rule of law is one that does not imply a suppression of individual freedom.

Admitting that a precise definition of political economy is unattainable, Professor Gide defines the province of this science in a practical way, by saying that it "embraces that which concerns wealth, in the broadest acceptation of that word." This causes the extent of this scientific domain to depend on the conception formed of wealth itself; and the conception that is actually formed is neither too broad nor too narrow for the end in view. It recognizes no strictly "immaterial wealth," and thus does not carry the science beyond the domain of matter; yet it carries it beyond the limits that certain narrower definitions have imposed upon it.

The theory of value presented in this work is akin to that of Professor Jevons, though not quite identical with it. The treatment of competition incidentally reveals the conditions in which the competitive process tends to make commodities dear, and those in which monopoly, if it could be made to act in a normal way, would tend to make them cheap. The author's theory of production recognizes only one true *agent* in the creation of wealth, namely, man; but it reveals *conditions* of "original matter," "location," "time," "instruments" and "environment" that are necessary in order to make man's agency effective. In a short passage there is presented a conception of time as an economic element that gives to the theory an affiliation with the one brought forward in the noteworthy work of Professor Von Böhm-Bawerk on *Capital and*

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Interest. The author, indeed, shows a kinship with progressive minds in Europe and America in his entire treatment of capital, exchange and distribution. It is in the discussion of the laws that now determine the division of the social income among various claimants that the rendering of full justice to opposing schools of thought is most difficult, and, when accomplished, most beneficial. Professor Gide's work accomplishes this. He states indeed, at the outset of this discussion, that the proportions in which the income of society is divided are of less consequence than the total amount of that income itself; that the chief end of men's economic effort should be to secure a large amount to divide. Yet it is the division itself that is the cause of an embitterment that becomes more and more insupportable as other causes of social inequality are swept away. Socialism, collectivism, co-operation and individualism have each something to offer in the way of a solution of the difficulty, and Professor Gide shows the strength and the weakness of each plan. He finds that while the ideal of the individualist, "to every man the product of his labor" would not, if it were realized, ensure absolute justice, it would give as near an approximation to it as actual conditions render possible. Here indeed he opens a problem that is worthy of the best thought that can be brought to bear upon it. Are there or are there not forces at work that tend, when their action is not vitiated, to give to every man the value that he creates? A full answer to this question has probably never been given.

We pass over many things that are of great interest, and, among the rest, over the discussion of landed property and that of public finance. The treatise as a whole will be especially welcomed by those readers who feel that truth cannot lie at the extremes of doctrinal controversy, and who yet have not fully succeeded in locating the middle line along which it is to be sought.

J. B. CLARK.

La comptabilité publique en France. Par CH. CONDER. Paris, Berger-Levrault et C^ie^, 1888. — 94 pp.

M. Conder's pamphlet does not deal with the entire financial system of France; it is simply a description of the method of public book-keeping and settlement of public accounts in vogue at the present time in that country. The subject of which it treats is so technical and the space devoted to it so small that no one can understand it who has not quite a knowledge of French finances. It is therefore not to be recommended to the beginner. But as a description of the actual accounts that are kept by the French administration and of the method of book-keeping adopted it is of value, if for no other reason, in that it includes a

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great deal of matter in a very small space. Not the least valuable parts of the book are the *aperçu historique* by which the main body of the book is prefaced, and the appendix on the system of accounts in England and Italy. Particularly interesting is the description of the new method of keeping public accounts lately introduced into Italian book-keeping by Sig. Cerboni, called "logismography." By this is meant merely the introduction into public accounts of the "stock account" of commerce, or the "construction account" of railway companies.

> Logismography . . . does not consider as an expense the purchase of an immovable or the construction of a bridge; nor as a receipt the sale of a forest or of a railroad. The element *bien* has replaced the element *espèce*; and inversely. The composition alone of the national domain has changed; its amount remains the same.

The operations which, according to this theory, are not real expenditures or real receipts, are classed under a title called "movements of capital." The result of such a method is often to make a deficit out of an apparent surplus and *vice versa*. Thus M. Cerboni makes of Germany's surplus for the year 1866 (65,777 *fr.*) a deficit of 8,311,688 *fr.*

Such a method may be one of the peculiarities of public book-keeping in Italy, but the general plan is not, as the author of the appendix seems to suppose, altogether peculiar to that country. France tried a somewhat similar experiment in her ordinary and extraordinary budget, but it had not the success that was anticipated.

F. J. G.

Dictionnaire de droit international privé: Législation, doctrine, jurisprudence françaises. Par RENÉ VINCENT et ÉDOUARD PÉNAUD, avocats à la Cour d'Appel de Paris. *Additions complémentaires jusqu'en juin, 1888* — Paris, Larose et Forcel, 1888. — Royal 8vo, xxviii, 951 pp.

This is an alphabetical digest of the French theory and practice in matters of international private law. The subject is not narrowly limited; the dictionary covers the entire field of what Renault and others call *droit international particulier*. It includes international criminal law, and such topics of international public law as foreign sovereigns, diplomatic agents, exterritorial jurisdiction in non-Christian countries, acquisition and loss of nationality, foreign occupation and annexation. Some of the articles amount to monographs: that on annexation, for example, occupies more than fifty closely printed, double-columned pages, and articles exceeding thirty pages in length are not rare. It is significant that the title "literary and artistic property" covers almost twenty pages. The American method of dealing with such foreign property could be

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described more succinctly. The arrangement of the single articles is very convenient for reference: each is divided into short sections, continuously numbered, and each of the longer articles contains two indexes, one systematic and one alphabetical. Each article opens with a special bibliography, including foreign writers as well as French; and at the beginning of the book there is a general bibliography of the French and foreign literatures. The scheme of these bibliographies, general and special, is very extensive: not only are books and pamphlets (and translations) included, but also articles from journals and sections of general works on law which deal with international private law. Lists are also given of general and special collections of treaties. Where so much is attempted, it would be ungenerous to criticise any but serious omissions. It is strange to find no mention of Professor Reinhold Schmid's strong and suggestive treatise on international private and criminal law (*Herrschaft der Gesetze*, Jena, 1863), nor of Wharton's *Digest of International Law*. And if articles from journals and sections from books are included, why are articles from cyclopædias *etc.* shut out? French and German dictionaries and "hand-books" of public and private law and the American *Cyclopædia of Political Science* contain many articles upon topics of international private and criminal law.

As is customary in French books, foreign names are frequently misspelled. The matter is seldom serious; "Muchlenbruch," "Whæchter," and "Gille*p*sie," for example, are recognizable to their acquaintance; but it is singular that so courteous a race as the French does not seem to appreciate the incivility of this carelessness.

Strictly speaking, it is only the bibliography that is thoroughly international; the dictionary, as its sub-title indicates, limits itself in the main to a presentation of the French rules of international private law. Some foreign decisions are cited, but these seem to be drawn mainly from treatises and journals. But the presentation of the French law is very complete. Each article gives the French statutes and treaty provisions bearing on the subject, the opinions of leading French writers and the decisions of the French courts. An excellent bibliographical feature, connected with the citation of decisions, is the constant reference to discussions of the decisions in the law journals.

The dictionary is apparently to be kept up to date by periodical supplements. The first, of twenty-three pages, contains over seventy new titles of books, pamphlets and articles, and several hundred new cases. As a digest of the international private case-law of France, and for the sake of its bibliographical details, this dictionary should find a place in every important law library in the world.

M. S.

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Handwörterbuch der Staatswissenschaften. Herausgegeben von Dr. J. CONRAD, Dr. L. ELSTER, Dr. N. LEXIS, Dr. EDG. LOENING. Erste Lieferung. Jena, Gustav Fischer, 1889. — Royal 8vo, 160 pp.

Again the German scientists are to the front with a comprehensive economic work. Not content with Schönberg's *Handbuch der politischen Oekonomie,* which consisted of lengthy essays on a few chief divisions of economic inquiry, they now present us with a detailed dictionary or cyclopædia, which seeks to find a place for every important fact, work or writer. The work, however, is not what it appears to be. It is called a "cyclopædia of the political sciences." This is a misnomer, for vast sections of political science — political philosophy, constitutional law, administrative law, international law — are wholly excluded. What the work deals with is simply economic science, or social economics in the wider sense. To call such a production a cyclopædia of the political sciences is misleading and inadmissible. The editors state in the preface that they have chosen the title simply for the sake of conciseness and convenience, and that they wish to avoid all controversy. But a desire for convenient brevity does not legitimize unscientific nomenclature.

The cyclopædia is edited by well-known professors at Halle, Göttingen and Breslau, who have succeeded in procuring the assistance as contributors of most of the German economists, and a few additional writers from Belgium, Holland, Italy and America — the latter without exception former students of Professor Conrad. In their announcement the editors state that special stress is to be laid on the practical utility of the articles, on the wealth of bibliographical detail, and on the wide survey of international conditions. In the first instalment these promises seem to be kept fairly well. But it must be remembered that it is a German work and intended primarily for the German public. We must hence not be surprised to learn that sixteen pages are devoted to a discussion of the German law of joint-stock companies, and less than ten to the eight other principal states; or that the discussion of clearing houses (*Abrechnungsstellen*) is confined to the German states.

The two leading subjects in the first instalment are agriculture (agricultural systems and statistics), pages 22–77, and joint-stock companies, pages 85–160; both treated as fully as the space allows. The projected size of the cyclopædia is almost appalling. There are to be from 30 to 35 parts of 160 pages each; *i.e.*, from 4800 to 5600 immense double columned pages, the whole to be completed in three years. It is clear from the present instalment that it will be a work of great value to the student and indispensable to every reference library.

E. R. A. S.

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